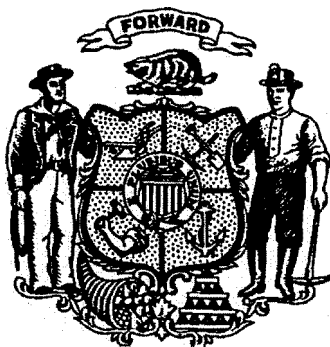


**WISCONSIN STATUTES
AND
ADMINISTRATIVE CODE**

**RELATING TO THE PRACTICE OF
MARRIAGE & FAMILY THERAPY,
PROFESSIONAL COUNSELING, &
SOCIAL WORK**

JANUARY 2003



State of Wisconsin
Department of Regulation and Licensing
Marriage and Family Therapy, Professional Counseling, and Social Work Examining Board
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INTRODUCTION

The Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors licenses and regulates social workers, marriage and family therapists and professional counselors. The Board of Social Workers, Marriage and Family Therapists and Professional Counselors is composed of members of the profession and public members who are appointed by the Governor and confirmed by the Senate.

The Department of Regulation and Licensing is an umbrella agency providing administrative services to various professional boards. Within the department the Bureau of Health Service Professions provides administrative services to the Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors. Questions about board business may be directed to the examining board in care of the Bureau of Health Service Professions, PO Box 8935, Madison WI 53708.

This book contains statutes and rules relevant to the regulation and practice of the social workers, marriage and family therapists and professional counselor professions in Wisconsin. These statutes and rules are part of the law of Wisconsin. To assist in using these materials, a subject index is included at the end of the book. Only a limited number of statutes and rules are included in this book.

The development of the law in this area is ongoing. Therefore, these rules and statutes may be revised subsequent to the printing of this book. Most local libraries maintain current sets of the Wisconsin Administrative Code and the Wisconsin Statutes. These documents as well as other state publications are available from the Department of Administration, Document Sales Division, PO Box 7840, Madison WI 53707.

All Wisconsin Statutes and Administrative Codes are available on the Internet at the following addresses:

Statutes: <http://www.legis.state.wi.us/rsb/statutes.html>

Rules: <http://www.legis.state.wi.us/rsb/code/codtoc.html>

CHAPTER 15

STRUCTURE OF THE EXECUTIVE BRANCH

SUBCHAPTER I

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SUBCHAPTER I

GENERAL PROVISIONS.

15.001 Declaration of policy. (1) THREE BRANCHES OF GOVERNMENT. The "republican form of government" guaranteed by the U.S. constitution contemplates the separation of powers within state government among the legislative, the executive and the judicial branches of the government. The legislative branch has the broad objective of determining policies and programs and review of program performance for programs previously authorized, the executive branch carries out the programs and policies and the judicial branch has the responsibility for adjudicating any conflicts which might arise from the interpretation or application of the laws. It is a traditional concept of American government that the 3 branches are to function separately, without intermingling of authority, except as specifically provided by law.

(2) GOALS OF EXECUTIVE BRANCH ORGANIZATION. (a) As the chief administrative officer of the state, the governor should be provided with the administrative facilities and the authority to carry out the functions of the governor's office efficiently and effectively within the policy limits established by the legislature.

(b) The administrative agencies which comprise the executive branch should be consolidated into a reasonable number of departments and independent agencies consistent with executive capacity to administer effectively at all levels. (c) The integration of the agencies in the executive branch should be on a functional basis, so that programs can be coordinated.

(d) Each agency in the executive branch should be assigned a name commensurate with the scope of its program responsibilities, and should be integrated into one of the departments or independent agencies of the executive branch as closely as the conflicting goals of administrative integration and responsiveness to the legislature will permit.

(3) GOALS OF CONTINUING REORGANIZATION. Structural reorganization should be a continuing process through careful executive and legislative appraisal of the placement of proposed new programs and the coordination of existing programs in response to changing emphasis or public needs, and should be consistent with the following goals:

(a) The organization of state government should assure its responsiveness to popular control. It is the goal of reorganization to improve legislative policy-making capability and to improve the administrative capability of the executive to carry out these policies.

(b) The organization of state government should facilitate communication between citizens and government. It is the goal of reorganization through coordination of related programs in function-oriented departments to improve public understanding of government programs and policies and to improve the relationships between citizens and administrative agencies.

(c) The organization of state government shall assure efficient and effective administration of the policies established by the legislature. It is the goal of reorganization to promote efficiency by improving the management and coordination of state services and by eliminating overlapping activities.

History: 1991 a. 316.

15.01 Definitions. In this chapter: (lg) "Affiliated credentialing board" means a part-time body that meets all of the following conditions:

(a) Is attached to an examining board to regulate a profession that does not practice independently of the profession regulated by the examining board or that practices in collaboration with the profession regulated by the examining board.

(b) With the advice of the examining board to which it is attached, sets standards of professional competence and conduct for the profession under the affiliated credentialing board's supervision, reviews the qualifications of prospective new practitioners, grants credentials, takes disciplinary action against credential holders and performs other functions assigned to it by law.

(1r) "Board" means a part-time body functioning as the policy-making unit for a department or independent agency or a part-time body with policy-making or quasi-judicial powers.

(2) "Commission" means a 3-member governing body in charge of a department or independent agency or of a division or other subunit within a department, except for the Wisconsin waterways commission which shall consist of 5 members, the parole commission which shall consist of 8 members, and the Fox River management commission which shall consist of 7 members. A Wisconsin group created for participation in a continuing interstate body, or the interstate body itself, shall be known as a "commission", but is not a commission for purposes of s.15.06. The parole commission created under s.15.145 (1) shall be known as a "commission", but is not a commission for purposes of s.15.06. The sentencing commission created under s.15.105 (27) shall be known as a "commission" but is not a commission for purposes of s. 15.06 (1) to (4m), (7), and (9).

(3) "Committee" means a part-time body appointed to study a specific problem and to recommend a solution or policy alternative with respect to that problem, and intended to terminate on the completion of its assignment. Because of their temporary nature, committees shall be created by session law rather than by statute.

(4) "Council" means a part-time body appointed to function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government, except the Wisconsin land council has the powers specified in s. 16.965 (3) and (5) and the powers granted to agencies under ch. 227, the Milwaukee River revitalization council has the powers and duties specified in s. 23.18, the council on physical disabilities has the powers and duties specified in s. 46.29 (1) and (2), and the state council on alcohol and other drug abuse has the powers and duties specified in s. 14.24.

(5) "Department" means the principal administrative agency within the executive branch of Wisconsin state government, but does not include the independent agencies under subch. III.

(6) "Division," "bureau," "section" and "unit" means the subunits of a department or an independent agency, whether specifically created by law or created by the head of the department or the independent agency for the more economic and efficient administration and operation of the programs assigned to

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the department or independent agency. The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" under this subsection. The office of the long-term care ombudsman under the board on aging and long-term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subsection.

(7) "Examining board" means a part-time body which sets standards of professional competence and conduct for the profession under its supervision, prepares, conducts and grades the examinations of prospective new practitioners, grants licenses, investigates complaints of alleged unprofessional conduct and performs other functions assigned to it by law. "Examining board" includes the board of nursing.

(8) "Head", in relation to a department, means the constitutional officer, commission, secretary or board in charge of the department. "Head", in relation to an independent agency, means the commission, commissioner or board in charge of the independent agency.

(9) "Independent agency" means an administrative agency within the executive branch created under subch. III.

History: 1977 c. 29, 274; 1979 c. 34; 1983 a. 27, 189, 371, 410, 538; 1985 a. 29, 120, 180; 1987 s. 27, 342, 399; 1989 a. 31, 107, 202; 1991 a. 39, 269, 315; 1993 a. 16, 107, 210, 215; 1995 a. 27 ss. 74 and 9145 (I); 1995 a. 442, 462; 1997 a. 27, 237; 2001 a. 16, 105, 109.

15.02 Offices, departments and independent agencies.

The constitutional offices, administrative departments and independent agencies which comprise the executive branch of Wisconsin state government are structured as follows:

(1) **SEPARATE CONSTITUTIONAL OFFICES.** The governor, lieutenant governor, secretary of state and state treasurer each head a staff to be termed the "office" of the respective constitutional officer.

(2) **PRINCIPAL ADMINISTRATIVE UNITS.** The principal administrative unit of the executive branch is a "department" or an "independent agency". Each such unit shall bear a title beginning with the words "State of Wisconsin" and continuing with "department of..." or with the name of the independent agency. A department may be headed by a constitutional officer, a secretary, a commission or a board. An independent agency may be headed by a commission, a commissioner or a board.

(3) **INTERNAL STRUCTURE.** (a) The secretary of each department may, subject to sub. (4), establish the internal structure within the office of secretary so as to best suit the purposes of his or her department. No secretary may authorize the designation of "assistant secretary" as the official position title of any employee of his or her department.

(b) For field operations, departments may establish district or area offices which may cut across divisional lines of responsibility.

(c) For their internal structure, all departments shall adhere to the following standard terms, and independent agencies are encouraged to review their internal structure and to adhere as much as possible to the following standard terms:

1. The principal subunit of the department is the "division". Each division shall be headed by an "administrator". The office of justice assistance in the department of administration and the office of credit unions in the department of financial institutions have the meaning of "division" and the executive staff director of the office of justice assistance in the department of administration and the director of credit unions have the meaning of "administrator" under this subdivision.

2. The principal subunit of the division is the "bureau". Each bureau shall be headed by a "director". The office of the long-term care ombudsman under the board on aging and long-term care and the office of educational accountability in the department of public instruction have the meaning of "bureau" under this subdivision.

2m. Notwithstanding subds. 1. and 2., the principal subunit of the department of tourism is the "bureau", which shall be headed by a "director".

3. If further subdivision is necessary, bureaus may be divided into subunits which shall be known as "sections" and which shall be headed by "chiefs" and sections may be divided into subunits which shall be known as "units" and which shall be headed by "supervisors".

(4) INTERNAL ORGANIZATION AND ALLOCATION OF FUNCTIONS.

The head of each department or independent agency shall, subject to the approval of the governor, establish the internal organization of the department or independent agency and allocate and reallocate duties and functions not assigned by law to an officer or any subunit of the department or independent agency to promote economic and efficient administration and operation of the department or independent agency. The head may delegate and redelegate to any officer or employee of the department or independent agency any function vested by law in the head. The governor may delegate the authority to approve selected organizational changes to the head of any department or independent agency.

History: 1971 c. 261; 1973 c. 12; 1975 c. 39; 1977 c. 29; 1979 c. 221; 1987 a. 27, 399; 1993 a. 16, 184, 215, 491; 1995 a. 27 ss. 75, 76, 76c and 9145 (I); 1997a.27.

Limits of internal departmental reorganization discussed. 61 Atty. Gen. 306.

15.03 Attachment for limited purposes. Any division, office, commission, council or board attached under this section to a department or independent agency or a specified division thereof shall be a distinct unit of that department, independent agency or specified division. Any division, office, commission, council or board so attached shall exercise its powers, duties and functions prescribed by law, including rule making, licensing and regulation, and operational planning within the area of program responsibility of the division, office, commission, council or board, independently of the head of the department or independent agency, but budgeting, program coordination and related management functions shall be performed under the direction and supervision of the head of the department or independent agency, except that with respect to the office of the commissioner of railroads, all personnel and biennial budget requests by the office of the commissioner of railroads shall be provided to the department of transportation as required under s. 189.02

(7) and shall be processed and properly forwarded by the public service commission without change except as requested and concurred in by the office of the commissioner of railroads.

History: 1981 c. 347; 1983 a. 27; 1993 a. 123; 1999 a. 9.

15.04 Heads of departments and independent agencies; powers and duties.(1) DUTIES. Each head of a department or independent agency shall:

(a) **Supervision.** Except as provided in s.15.03, plan, direct, coordinate and execute the functions vested in the department or independent agency.

(b) **Budget.** Biennially compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department or independent agency and each program, subprogram and activity therein.

(c) **Advisory bodies.** In addition to any councils specifically created by law, create and appoint such councils or committees as the operation of the department or independent agency requires. Members of councils and committees created under this general authority shall serve without compensation, but may be reimbursed for their actual and necessary expenses incurred in the performance of their duties and, if such reimbursement is made, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of such a council or committee shall be paid by the agency which pays the officer's or employee's salary.

(d) **Biennial report.** On or before October 15 of each odd-numbered year, submit to the governor and the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2), a report on the performance and operations of the department or independent agency during the preceding biennium, and projecting the goals and objectives of the department or independent agency as developed for the program budget report. The secretary of administration may prescribe the format of the report and may require such other information deemed appropriate. Each department or independent agency shall provide a copy of its biennial report to legislators upon request. Any department or independent agency may issue such additional reports on its findings and recommendations as its operations require. A department or independent agency may, on or before October 15, submit an annual report prepared by it, in place of the biennial report required under this paragraph, if the submission of the annual reports is approved by the secretary of administration.

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(e) **Seal.** Have authority to adopt a seal for the department or independent agency.

(f) **Bonds.** Have authority to require that any officer or employee of the department or independent agency give an official bond under ch. 19, if the secretary of administration agrees that the position held by such officer or employee requires bonding.

(g) **Discrimination review.** In order to determine whether there is any arbitrary discrimination on the basis of race, religion, national origin, sex, marital status or sexual orientation as defined in s. 111.32 (13m), examine and assess the statutes under which the head has powers or regulatory responsibilities, the procedures by which those statutes are administered and the rules promulgated under those statutes. If the department or agency head finds any such discrimination, he or she shall take remedial action, including making recommendations to the appropriate executive, legislative or administrative authority.

(i) **Records and forms management program.** Establish and maintain a records and forms management program.

(j) **Records and forms officer.** Appoint a records and forms officer, who shall be responsible for compliance by the department or independent agency with all records and forms management laws and rules and who may prevent any form from being put into use.

(k) **Form numbering and filing system.** Establish a numbering and filing system for forms.

(m) **Notice on forms.** See that each form used by the department or independent agency to seek information from municipalities, counties or the public contains on the first page of the form, or in the instructions for completing the form, a conspicuous notice of the authorization for the form, whether or not completing the form is voluntary, if it is not voluntary, the penalty for failure to respond and whether or not any personally identifiable information, as defined under s. 19.62 (5), requested in the form is likely to be used for purposes other than for which it is originally being collected. This paragraph does not apply to state tax forms.

(2) **DEPUTY.** Each secretary of a department or head of an independent agency under s. 230.08 (2) (L) may appoint a deputy who shall serve at the pleasure of the secretary or agency head outside the classified service. The deputy shall exercise the powers, duties and functions of the secretary or head in the absence of the secretary or head, and shall perform such other duties as the secretary or head prescribes. The adjutant general may appoint 2 deputies as provided in s. 21.18 (1). In this subsection "secretary" includes the attorney general and the state superintendent of public instruction.

(3) **DEPUTY APPROVALS.** Positions for which appointment is made under sub. (2) may be authorized only under s. 16.505.

History: 1971 c. 125; 1975 c. 94; 1977 c. 196, 273, 418, 447; 1979 c. 221; 1981 c. 112, 350; 1981 c. 391 s. 210; 1983 a. 27, 524; 1985 a. 29; 1985 a. 180 ss. 2 to 4, 30m; 1985 a. 332; 1987 a. 147 s. 25; 1987 a. 186; 1989 a. 248; 1991 a. 39, 189; 1995 a. 27; 1997 a. 73.

15.05 Secretaries. (1) **SELECTION.** (a) If a department is under the direction and supervision of a secretary, the secretary shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(b) Except as provided in pars. (c) and (d), if a department is under the direction and supervision of a board, the board shall appoint a secretary to serve at the pleasure of the board outside the classified service. In such departments, the powers and duties of the board shall be regulatory, advisory and policy-making, and not administrative. All of the administrative powers and duties of the department are vested in the secretary, to be administered by him or her under the direction of the board. The secretary, with the approval of the board, shall promulgate rules for administering the department and performing the duties assigned to the department.

(c) The secretary of natural resources shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(d) The secretary of agriculture, trade and consumer protection shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor.

(3) **EXECUTIVE ASSISTANT.** Each secretary may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the secretary prescribes. In this subsection, "secretary" includes the attorney general, the adjutant general, the director of the

technical college system and the state superintendent of public instruction.

(3m) **FIELD DISTRICT OR FIELD AREA DIRECTORS.** Each secretary may appoint a director under the classified service for each district or area office established in his or her department under s. 15.02 (3) (b).

(4) **OFFICIAL OATH.** Each secretary shall take and file the official oath prior to assuming office.

(5) **EXECUTIVE ASSISTANT APPROVALS.** Positions for which appointment is made under sub. (3) may be authorized only under s. 16.505.

History: 1973 c. 90; 1977 c. 4, 196; 1985 a. 18; 1985 a. 332 s. 251 (3); 1989 a. 31, 169; 1993 a. 399; 1995 a. 27.

A secretary, appointed by the governor, could be removed only by the governor, even though the general appointment statute had been amended to provide that the secretary is appointed by a board to serve at the board's pleasure. *Moses v. Board of Veterans Affairs*, 80 Wis. 2d 411, 259 N.W.2d 102 (1977).

15.06 Commissions and commissioners. (1) **SELECTION OF MEMBERS.** (a) Except as otherwise provided in this subsection, the members of commissions shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 6-year terms expiring on March 1 of the odd-numbered years.

(ag) Members of the Wisconsin waterways commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for staggered 5-year terms.

(ar) The commissioner of railroads shall be nominated by the governor, and with the advice and consent of the senate appointed, for a 6-year term expiring on March 1 of an odd-numbered year.

(b) The commissioner of insurance shall be nominated by the governor, and with the advice and consent of the senate appointed, to serve at the pleasure of the governor. The governor may remove from office the commissioner of insurance who was appointed for a fixed term before August 1, 1987.

(d) The members of the personnel commission shall be nominated by the governor, and with the advice and consent of the senate appointed, for 5-year terms, subject to the following conditions:

1. At least one member shall be licensed to practice law in this state.

2. They shall possess some professional experience in the field of personnel or labor relations.

3. No member may hold any other position in state employment.

4. No member, when appointed or for 3 years immediately prior to the date of appointment, may have been an officer of a committee in any political party, partisan political club or partisan political organization or have held or been a candidate for any partisan elective public office. No member may become a candidate for or hold any such office.

5. At no time may more than 2 members be adherents of the same political party.

6. Each member of the commission shall be a U.S. citizen and shall have been a resident of this state for at least 3 years.

(2) **SELECTION OF OFFICERS.** Each commission may annually elect officers other than a chairperson from among its members as its work requires. Any officer may be reappointed or reelected. At the time of making new nominations to commissions, the governor shall designate a member or nominee of each commission to serve as the commission's chairperson for a 2-year term expiring on March 1 of the odd-numbered year except that:

(a) Commencing March 1, 1979, and thereafter, the labor and industry review commission shall elect one of its members to serve as the commission's chairperson for a 2-year term expiring on March 1 of the odd-numbered year.

(3) **FULL-TIME OFFICES.** (a) A commissioner may not hold any other office or position of profit or pursue any other business or vocation, but shall devote his or her entire time to the duties of his or her office. This paragraph does not apply to: 1. The commissioner of insurance. 3. The members of the Wisconsin waterways commission.

(b) The commissioner of insurance shall not engage in any other occupation, business or activity that is in any way inconsistent with the performance of the duties of the commissioner of insurance, nor shall the commissioner hold any other public office.

(4) **CHAIRPERSON; ADMINISTRATIVE DUTIES.** The administrative duties of each commission shall be vested in its chairperson, to be administered by the chairperson under the statutes and rules of the

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commission and subject to the policies established by the commission.

(4m) EXECUTIVE ASSISTANT. Each commission chairperson under s. 230.08 (2) (m) and each commissioner of the public service commission may appoint an executive assistant to serve at his or her pleasure outside the classified service. The executive assistant shall perform duties as the chairperson or commissioner prescribes.

(5) **FREQUENCY OF MEETINGS; PLACE.** Every commission shall meet on the call of the chairperson or a majority of its members. Every commission shall maintain its offices in Madison, but may meet or hold hearings at such other locations as will best serve the citizens of this state.

(6) QUORUM. A majority of the membership of a commission constitutes a quorum to do business, except that vacancies shall not prevent a commission from doing business. This subsection does not apply to the parole commission.

(7) REPORTS. Every commission attached to a department shall submit to the head of the department, upon request of that person not more often than annually, a report on the operation of the commission.

(8) OFFICIAL OATH. Every commissioner shall take and file the official oath prior to assuming office.

(9) EXECUTIVE ASSISTANT APPROVALS. Positions for which appointment is made under sub. (4m) may be authorized only under s. 16.505.

History: 1971 c. 193,307; 1977 c. 29, 196,274; 1981 c. 347; 1983 a. 27,371,410, 538; 1985 a. 29; 1987 a. 27,403; 1989 a. 31; 1991 a. 39,269,316; 1993 a. 16, 123; 1995 a. 27; 1997 a. 27; 2001 a. 16.

A single member of the personnel commission is authorized to act as the commission's representative before the Gen. Sec.

Sub. (3) (a) prohibits a commissioner in pursuing business interests that would prevent properly fulfilling the duties of the office. 77 Arty. 6

15.07 Boards.(1) SELECTION OF MEMBERS. (a) If a department or independent agency is under the direction and supervision of a cabinet department, the members of the board, other than the members voting on the board of directors of the office or position, shall be appointed by the governor, and with the advice and consent of the senate, for the terms prescribed by law. (b) The members of the board of directors of the office or position shall be appointed by the governor without senate confirmation.

2. Mer of ti ti board shall be appointed as provided in s. 51

3. Members of the employee trust funds board appointed or reappointed under s.15.16 (1) (a), (b), (d) and (f) shall be appointed or reappointed as provided in that section.

1. Members of the _____ board appointed under § 157 (3) shall be appointed as provided in that section.

5. The members of the educational communications board appointed pursuant to s.15.57(5) and (6) shall be appointed as provided in that section.

6. Members of the University of Wisconsin Hospitals and Clinics Board appointed under s.11.96 shall be appointed by the governor without senate confirmation.

(b) If the board not covered under par. (a), the governor shall appoint the members of the _____ other than the members serving on the _____ of the _____ their office or position and _____ except as otherwise provided, for terms prescribed by law except that all members of the _____ following the _____ of this paragraph, other than the members serving on a _____ because of holding _____ office or position, shall be _____ governor, and with the advice and _____ the senate appointed, for terms _____ law:

1. Bank review board.
2. College savings program.
3. Credit union review board.
5. Savings and loan review board.
8. Real estate board.
9. Board on aging and long-term care.
10. Land and water conservation board.
11. Wildlife conservation board.
12. Prison industries board.
14. Labor relations board.
15. The 3 members of the lower Wisconsin state river board appointed under s. 15. (3) (b) 7

15m. The members of the state fair park board appointed under s.15.445 (4) (a) 3. to 5.

16. Land information board.

Note: Subd. 16. is repealed eff. 9-1-03 by 1997Wis. Act 27.

17. Real estate appraisers board.

18. Savings bank review board.

19m. Auctioneer board.

20. The 3 members of the Kickapoo reserve management board appointed under s.15.445 (2) (b) 3.

22. Private employer health care coverage board.

Note: Subd. 22. is repealed eff. 1-1-10 by 1999 Wis. Act 9.

(c) Except as provided under par. (cm), fixed terms of members of boards shall expire on May 1 and, if the term is for an even number of years, shall expire in an odd-numbered year.

(cm) The term of one member of the ethics board shall expire on each May 1. The terms of 3 members of the development finance board appointed under s.15.155 (1) (a) 6. shall expire on May 1 of every even-numbered year and the terms of the other 3 members appointed under s.15.155 (1) (a) 6. shall expire on May 1 of every odd-numbered year. The terms of the 3 members of the land and water conservation board appointed under s.15.135 (4) (b) 2. shall expire on January 1. The term of the member of the land and water conservation board appointed under s.15.135 (4) (b) 2m. shall expire on May 1 of an even-numbered year. The terms of members of the real estate board shall expire on July 1. The terms of the appraiser members of the real estate appraisers board and the terms of the auctioneer and auction company representative members of the auctioneer board shall expire on May 1 in an even-numbered year.

(cs) No member of the auctioneer board, real estate appraisers board or real estate board may be an officer, director or employee of a private organization that promotes or furthers any profession or occupation regulated by that board.

(2) **SELECTION OF OFFICERS.** At its first meeting in each year, every board shall elect a chairperson, vice chairperson and secretary each of whom may be reelected for successive terms, except that:

(a) The chairperson and vice chairperson of the investment board shall be designated biennially by the governor.

(b) The chairperson of the board on health care information shall be designated biennially by the governor.

(d) The officers elected by the board of regents of the University of Wisconsin System and the technical college system board shall be known as a president, vice president and secretary.

(e) The representative of the department of justice shall serve as chairperson of the claims board and the representative of the department of administration shall serve as its secretary.

(f) The state superintendent of public instruction or his or her designated representative shall serve as chairperson of the school district boundary appeal board.

(g) A representative of the department of justice designated by the attorney general shall serve as nonvoting secretary to the law enforcement standards board.

(h) The chairperson of the state fair park board shall be designated annually by the governor from among the members appointed under s.15.445 (4) (a) 3., 4. and 5.

(j) At its first meeting in each even-numbered year, the state capitol and executive residence board shall elect officers for 2-year terms.

(k) The governor shall serve as chairperson of the governor's work-based learning board.

(L) The governor shall serve as chairperson of the information technology management board and the chief information officer shall serve as secretary of that board.

(3) FREQUENCY OF MEETINGS. (a) If a department or independent agency is under the direction and supervision of a board, the board shall meet quarterly and may meet at other times on the call of the chairperson or a majority of its members. If a department or independent agency is under the direction and supervision of a board, the board shall, in addition, meet no later than August 31 of each even-numbered year to consider and approve a proposed budget of the department or independent agency for the succeeding fiscal biennium.

(b) Except as provided in par. (bm), each board not covered under par. (a) shall meet annually, and may meet at other times on the call of the chairperson or a majority of its members. The auctioneer board, the real estate board and the real estate

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appraisers board shall also meet on the call of the secretary of regulation and licensing or his or her designee within the department.

(bm) 1. The board on health care information shall meet 4 times each year and may meet at other times on the call of the chairperson or a majority of the board's members.

2. The environmental education board shall meet 4 times each year and may meet at other times on the call of the chairperson.

3. The auctioneer board shall meet at least 4 times each year.

4. The information technology management board shall meet at least 4 times each year and may meet at other times on the call of the chairperson.

(4) **QUORUM.** A majority of the membership of a board constitutes a quorum to do business and, unless a more restrictive provision is adopted by the board, a majority of a quorum may act in any matter within the jurisdiction of the board. This subsection does not apply to actions of the ethics board or the school district boundary appeal board as provided in ss. 19.47 (4) and 117.05 (2) (a).

(5) **REIMBURSEMENT FOR EXPENSES; COMPENSATION.** Except as provided in sub. (5m), the members of each board shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an officer or employee of this state who represents an agency as a member of a board to be paid by the agency which pays the member's salary. The members shall receive no compensation for their services, except that the following members of boards, except full-time state officers or employees, also shall be paid the per diem stated below for each day on which they were actually and necessarily engaged in the performance of their duties:

(a) Members of the investment board, \$50 per day.

(b) Members of the banking review board, \$25 per day but not to exceed \$1,500 per year.

(c) Members of the auctioneer board, \$25 per day.

(d) Members of the board of agriculture, trade and consumer protection, not exceeding \$35 per day as fixed by the board with the approval of the governor, but not to exceed \$1,000 per year.

(e) In lieu of a per diem, the members of the technical college system board shall receive \$100 annually.

(f) Members of the teachers retirement board, appointive members of the Wisconsin retirement board, appointive members of the group insurance board, members of the deferred compensation board and members of the employee trust funds board, \$25 per day.

(g) Members of the savings and loan review board, \$10 per day.

(gm) Members of the savings bank review board, \$10 per day.

(h) Voting members of the land and water conservation board, \$25 per day.

(i) Members of the educational approval board, \$25 per day.

(j) Members of the state fair park board, \$10 per day but not to exceed \$600 per year.

(k) Members of the ethics board, \$25 per day.

(L) Members of the school district boundary appeal board, \$25 per day.

(n) Members of the elections board, \$25 per day.

(o) Members of the burial sites preservation board, \$25 per day.

(r) Members of the real estate board, \$25 per day.

(s) Members of the credit union review board, \$25 per day but not to exceed \$1,500 per year.

(t) Members of the waste facility siting board who are town or county officials, \$35 per day.

(w) Members of the lower Wisconsin state riverway board, \$25 per day.

(x) Members of the real estate appraisers board, \$25 per day.

(y) Members of the Kickapoo reserve management board, \$25 per day.

(5m) **LIMITATIONS ON SALARY AND EXPENSES** (b) *Lower Wisconsin state riverway board.* The members, except for the chairperson, of the lower Wisconsin state riverway board shall be reimbursed under sub. (5) for only their necessary and actual travel expenses incurred in the performance of their duties, or shall be paid \$25 plus mileage incurred in the performance of their duties, whichever is greater. The chairperson of the lower Wisconsin state riverway board shall be reimbursed for all his or her actual and necessary expenses incurred in the performance of his or her duties. The lower Wisconsin state riverway board shall

determine which expenses of the chairperson are actual and necessary before reimbursement.

(6) **REPORTS.** Every board created in or attached to a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the board.

(7) **OFFICIAL OATH.** Each member of a board shall take and file the official oath prior to assuming office.

History: 1971 c. 100 s. 23; 1971 c. 125, 261, 270, 323; 1973 c. 90, 156, 299, 334; 1975 c. 39, 41, 422; 1977 c. 29 ss. 24, 26, 1650m (3); 1977 c. 203, 277, 418, 427; 1979 c. 34, 110, 221, 346; 1981 c. 20, 62, 94, 96, 156, 314, 346, 374, 391; 1983 a. 27, 282, 403; 1985 a. 20, 29, 316; 1987 a. 27, 119, 142, 354, 399, 403; 1989 a. 31, 102, 114, 219, 299, 340; 1991 a. 25, 39, 116, 221, 269, 316; 1993 a. 16, 75, 102, 184, 349, 399, 490; 1995 a. 27, 216, 247; 1997 a. 27; 1999 a. 9, 44, 181, 197; 2001 a. 16.

"Membership" as used in sub. (4) means the authorized number of positions and not the number of positions that are currently occupied. 66 Atty. Gen. 192

15.08 Examining boards and councils. (1) **SELECTION OF MEMBERS.** All members of examining boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an examining board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) **PUBLIC MEMBERS.** (a) Public members appointed under s. 15.405 or 15.407 shall have all the powers and duties of other members except they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s. 15.405 or 15.407 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the board, examining board or examining council to which they are appointed, shall not be married to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the chiropractic examining board, the dentistry examining board, the hearing and speech examining board, the medical examining board, perfusionists examining council, respiratory care practitioners examining council and council on physician assistants, the board of nursing, the nursing home administrator examining board, the veterinary examining board, the optometry examining board, the pharmacy examining board, the marriage and family therapy, professional counseling, and social work examining board, and the psychology examining board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(c) The membership of each examining board and examining council created in the department of regulation and licensing after June 1, 1975, shall be increased by one member who shall be a public member appointed to serve for the same term served by the other members of such examining board or examining council, unless the act relating to the creation of such examining board or examining council provides that 2 or more public members shall be appointed to such examining board or examining council.

(2) **SELECTION OF OFFICERS.** At its first meeting in each year, every examining board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) **FREQUENCY OF MEETINGS.** (a) Every examining board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The medical examining board shall meet at least 12 times annually.

(c) The hearing and speech examining board shall meet at least once every 3 months.

(4) **QUORUM.** (a) A majority of the membership of an examining board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the examining board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the voting membership of the examining board.

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(5) **GENERAL POWERS.** Each examining board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the examining board.

(6) **IMPROVEMENT OF THE PROFESSION.** In addition to any other duties vested in it by law, each examining board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each examining board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) **COMPENSATION AND REIMBURSEMENT FOR EXPENSES.** Each member of an examining board shall, unless the member is a full-time salaried employee of this state, be paid a per diem of \$25 for each day on which the member was actually and necessarily engaged in the performance of examining board duties. Each member of an examining board shall be reimbursed for the actual and necessary expenses incurred in the performance of examining board duties.

(8) **OFFICIAL OATH.** Every member of an examining board shall take and file the official oath prior to assuming office.

(9) **ANNUAL REPORTS.** Every examining board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the examining board.

(10) **SEAL.** Every examining board may adopt a seal.

History: 1971 c. 40; 1975 c. 86, 199; 1977 c. 418; 1979 c. 32; 1979 c. 34 ss. 32e to 32s, 2102 (45) (a); 1979 c. 221; 1981 c. 94; 1983 a. 403,524; 1985 a. 332,340; 1987 a. 399; 1989 a. 229,316,359; 1991 a. 39,160,316; 1993 a. 105,107,184,490; 1995 a. 245; 1997 a. 175; 1999 a. 180; 2001 a. 80, 89, 103. Selection and terms of officers of regulatory and licensing boards are discussed. 75 Att'y. Gen. 247 (1986).

15.085 Affiliated credentialing boards. (1) **SELECTION OF MEMBERS.** All members of affiliated credentialing boards shall be residents of this state and shall, unless otherwise provided by law, be nominated by the governor, and with the advice and consent of the senate appointed. Appointments shall be for the terms provided by law. Terms shall expire on July 1. No member may serve more than 2 consecutive terms. No member of an affiliated credentialing board may be an officer, director or employee of a private organization which promotes or furthers the profession or occupation regulated by that board.

(1m) **PUBLIC MEMBERS.** (a) Public members appointed under s.15.406 shall have all of the powers and duties of other members except that they shall not prepare questions for or grade any licensing examinations.

(am) Public members appointed under s.15.406 shall not be, nor ever have been, licensed, certified, registered or engaged in any profession or occupation licensed or otherwise regulated by the affiliated credentialing board to which they are appointed, shall not be named to any person so licensed, certified, registered or engaged, and shall not employ, be employed by or be professionally associated with any person so licensed, certified, registered or engaged.

(b) The public members of the physical therapists affiliated credentialing board, podiatrists affiliated credentialing board or occupational therapists affiliated credentialing board shall not be engaged in any profession or occupation concerned with the delivery of physical or mental health care.

(2) **SELECTION OF OFFICERS.** At its first meeting in each year, every affiliated credentialing board shall elect from among its members a chairperson, vice chairperson and, unless otherwise provided by law, a secretary. Any officer may be reelected to succeed himself or herself.

(3) **FREQUENCY OF MEETINGS.** (a) Every affiliated credentialing board shall meet annually and may meet at other times on the call of the chairperson or of a majority of its members.

(b) The chairperson of an affiliated credentialing board shall meet at least once every 6 months with the examining board to

which the affiliated credentialing board is attached to consider all matters of joint interest.

(4) **QUORUM.** (a) A majority of the membership of an affiliated credentialing board constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the affiliated credentialing board.

(b) Notwithstanding par. (a), no certificate or license which entitles the person certified or licensed to practice a trade or profession shall be suspended or revoked without the affirmative vote of two-thirds of the membership of the affiliated credentialing board.

(5) **GENERAL POWERS.** Each affiliated credentialing board: (a) May compel the attendance of witnesses, administer oaths, take testimony and receive proof concerning all matters within its jurisdiction.

(b) Shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. In addition to any other procedure under ch. 227 relating to the promulgation of rules, when promulgating a rule, other than an emergency rule under s. 227.24, an affiliated credentialing board shall do all of the following:

1. Submit the proposed rule to the examining board to which the affiliated credentialing board is attached. The proposed rule shall be submitted under this subdivision at least 60 days before the proposed rule is submitted to the legislative council staff under s. 227.15 (1).

2. Consider any comments on a proposed rule made by the examining board to which the affiliated credentialing board is attached, if the examining board submits the comments to the affiliated credentialing board within 30 days after a public hearing on the proposed rule under s. 227.18 or, if no hearing is held, within 30 days after the proposed rule is published under s. 227.16 (2) (c).

3. Include in the report submitted to the legislature under s. 227.19 (2), any comments on the proposed rule submitted by the examining board under subd. 2. and the affiliated credentialing board's responses to those comments.

(c) May limit, suspend or revoke, or reprimand the holder of, any license, permit or certificate granted by the affiliated credentialing board.

(6) **IMPROVEMENT OF THE PROFESSION.** In addition to any other duties vested in it by law, each affiliated credentialing board shall foster the standards of education or training pertaining to its own trade or profession, not only in relation of the trade or profession to the interest of the individual or to organized business enterprise, but also in relation to government and to the general welfare. Each affiliated credentialing board shall endeavor, both within and outside its own trade or profession, to bring about a better understanding of the relationship of the particular trade or profession to the general welfare of this state.

(7) **COMPENSATION AND REIMBURSEMENT FOR EXPENSES.** Each member of an affiliated credentialing board shall, unless the member is a full-time salaried employee of this state, be paid a per diem of \$25 for each day on which the member was actually and necessarily engaged in the performance of affiliated credentialing board duties. Each member of an affiliated credentialing board shall be reimbursed for the actual and necessary expenses incurred in the performance of affiliated credentialing board duties.

(8) **OFFICIAL OATH.** Every member of an affiliated credentialing board shall take and file the official oath prior to assuming office.

(9) **ANNUAL REPORTS.** Every affiliated credentialing board shall submit to the head of the department in which it is created, upon request of that person not more often than annually, a report on the operation of the affiliated credentialing board.

(10) **SEAL.** Every affiliated credentialing board may adopt a seal.

History: 1993a. 107; 1997 a. 175; 1999 a. 180.

15.09 Councils. (1) **SELECTION OF MEMBERS.** (a) Unless otherwise provided by law, the governor shall appoint the members of councils for terms prescribed by law. Except as provided in par. (b), fixed terms shall expire on July 1 and shall, if the term is for an even number of years, expire in an odd-numbered year.

(b) The terms of the members of the council on recycling shall expire as specified under s.15.347 (17) (c).

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(2) **SELECTION OF OFFICERS.** Unless otherwise provided by law, at its first meeting in each year every council shall elect a chairperson, vice chairperson and secretary from among its members. Any officer may be reelected for successive terms. For any council created under the general authority of s.15.04 (1) (c), the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which such council is created shall designate an employee of the department or independent agency to serve as secretary of the council and to be a voting member thereof.

(3) **LOCATION AND FREQUENCY OF MEETINGS.** Unless otherwise provided by law, every council shall meet at least annually and shall also meet on the call of the head of the department or independent agency in which it is created, and may meet at other times on the call of the chairperson or a majority of its members. A council shall meet at such locations as may be determined by it unless the constitutional officer or secretary heading the department or the chief executive officer of the independent agency in which it is created determines a specific meeting place.

(4) **QUORUM.** Except as otherwise expressly provided, a majority of the membership of a council constitutes a quorum to do business, and a majority of a quorum may act in any matter within the jurisdiction of the council.

(5) **POWERS AND DUTIES.** Unless otherwise provided by law, a council shall advise the head of the department or independent agency in which it is created and shall function on a continuing basis for the study, and recommendation of solutions and policy alternatives, of the problems arising in a specified functional area of state government.

(6) **REIMBURSEMENT FOR EXPENSES.** Members of a council shall not be compensated for their services, but members of councils created by statute shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties, such reimbursement in the case of an elective or appointive officer or employee of this state who represents an agency as a member of a council to be paid by the agency which pays his or her salary.

(7) **REPORTS.** Unless a different provision is made by law for transmittal or publication of a report, every council created in a department or independent agency shall submit to the head of the department or independent agency, upon request of that person not more often than annually, a report on the operation of the council.

(8) **OFFICIAL OATH.** Each member of a council shall take and file the official oath prior to assuming office.

History: 1971 c. 211; 1977 c. 29; 1977 c. 196 s. 131; 1979 c. 34, 346; 1983 a. 27, 388, 410; 1985 a. 84; 1989 a. 335; 1991 a. 39, 189; 1993 a. 184.6. One person

15.40 Department of regulation and licensing; creation. There is created a department of regulation and licensing under the direction and supervision of the secretary of regulation and licensing.

History: 1971 c. 270 s. 104; 1975 c. 39; 1977 c. 29; 1977 c. 196 s. 131; 1977 c. 418 ss. 24 to 27.

15.405 Same; attached boards and examining boards.(1)

ACCOUNTING EXAMINING BOARD. There is created an accounting examining board in the department of regulation and licensing. The examining board shall consist of 7 members, appointed for staggered 4-year terms. Five members shall hold certificates as certified public accountants and be eligible for licensure to practice in this state. Two members shall be public members.

(2) **EXAMINING BOARD OF ARCHITECTS, LANDSCAPE ARCHITECTS, PROFESSIONAL ENGINEERS, DESIGNERS AND LAND SURVEYORS.** There is created an examining board of architects, landscape architects, professional engineers, designers and land surveyors in the department of regulation and licensing. Any professional member appointed to the examining board shall be registered to practice architecture, landscape architecture, professional engineering, the design of engineering systems or land surveying under ch. 443. The examining board shall consist of the following members appointed for 4-year terms: 3 architects, 3 landscape architects, 3 professional engineers, 3 designers, 3 land surveyors and 10 public members.

(a) In operation, the examining board shall be divided into an architect section, a landscape architect section, an engineer section, a designer section and a land surveyor section. Each section shall consist of the 3 members of the named profession appointed to the examining board and 2 public members appointed

to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(b) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of registration, and all other matters of interest to either the architect, landscape architect, engineer, designer or land surveyor section shall be acted upon solely by the interested section.

(c) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(2m) **EXAMINING BOARD OF PROFESSIONAL GEOLOGISTS, HYDROLOGISTS AND SOIL SCIENTISTS.**(a) There is created in the department of regulation and licensing an examining board of professional geologists, hydrologists and soil scientists consisting of the following members appointed for 4-year terms:

1. Three members who are professional geologists licensed under ch. 470.

2. Three members who are professional hydrologists licensed under ch. 470.

3. Three members who are professional soil scientists licensed under ch. 470.

4. Three public members.

(b) In operation, the examining board shall be divided into a professional geologist section, a professional hydrologist section and a professional soil scientist section. Each section shall consist of the 3 members of the named profession appointed to the examining board and one public member appointed to the section. The examining board shall elect its own officers, and shall meet at least twice annually.

(c) All matters pertaining to passing upon the qualifications of applicants for and the granting or revocation of licenses, and all other matters of interest to either the professional geologist, hydrologist or soil scientist section shall be acted upon solely by the interested section.

(d) All matters of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the matter is of interest.

(3) **AUCTIONEER BOARD.** (a) There is created in the department of regulation and licensing an auctioneer board consisting of the following members appointed for 4-year terms:

1. Four members, each of whom is registered under ch. 480 as an auctioneer, or is an auction company representative, as defined in s. 480.01 (3), of an auction company that is registered under ch. 480 as an auction company.

2. Three public members.

(b) No member of the board may serve more than 2 terms.

(5) **CHIROPRACTIC EXAMINING BOARD.** There is created a chiropractic examining board in the department of regulation and licensing. The chiropractic examining board shall consist of 6 members, appointed for staggered 4-year terms. Four members shall be graduates from a school of chiropractic and licensed to practice chiropractic in this state. Two members shall be public members. No person may be appointed to the examining board who is in any way connected with or has a financial interest in any chiropractic school.

(5g) **CONTROLLED SUBSTANCES BOARD.** There is created in the department of regulation and licensing a controlled substances board consisting of the attorney general, the secretary of health and family services and the secretary of agriculture, trade and consumer protection, or their designees; the chairperson of the pharmacy examining board or a designee; and one psychiatrist and one pharmacologist appointed for 3-year terms.

(6) **DENTISTRY EXAMINING BOARD.** There is created a dentistry examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Six dentists who are licensed under ch. 447.
Note: Par. (a) is shown as repealed and recreated eff. 12-31-02 by 2001 Wis. Act 16. Prior to 12-31-02 it reads: (a) Six dentists who are licensed under ch. 447.

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s.15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

Note: Par. (b) is shown as repealed and recreated eff. 12-31-02 by 2001 Wis. Act 16. Prior to 12-31-02 it reads:

(b) Three dental hygienists who are licensed under ch. 447. Notwithstanding s.15.08 (1m) (a), the dental hygienist members may participate in the preparation and grading of licensing examinations for dental hygienists.

(c) Two public members.

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(6m) HEARING AND SPEECH EXAMINING BOARD. There is created a hearing and speech examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

(a) Three hearing instrument specialists licensed under subch. I of ch. 459.

(b) One otolaryngologist.

(c) 1. One audiologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One audiologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(d) 1. One speech-language pathologist registered under subch. III of ch. 459. This subdivision applies during the period beginning on December 1, 1990, and ending on June 30, 1993.

2. One speech-language pathologist licensed under subch. II of ch. 459. This subdivision applies after June 30, 1993.

(e) Two public members. One of the public members shall be a hearing aid user.

(7) MEDICAL EXAMINING BOARD. (a) There is created a medical examining board in the department of regulation and licensing.

(b) The medical examining board shall consist of the following members appointed for staggered 4-year terms:

1. Nine licensed doctors of medicine.

2. One licensed doctor of osteopathy.

3. Three public members.

(c) The chairperson of the patients compensation fund peer review council under s. 655.275 shall serve as a nonvoting member of the medical examining board.

(7c) MARRIAGE AND FAMILY THERAPY, PROFESSIONAL COUNSELING, AND SOCIAL WORK EXAMINING BOARD. (a) There is created a marriage and family therapy, professional counseling, and social work examining board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

1. Four social worker members who are certified or licensed under ch. 457.

2. Three marriage and family therapist members who are licensed under ch. 457.

3. Three professional counselor members who are licensed under ch. 457.

4. Three public members who represent groups that promote the interests of consumers of services provided by persons who are certified or licensed under ch. 457.

(am) The 4 members appointed under par. (a) 1. shall consist of the following:

1. One member who is certified under ch. 457 as an advanced practice social worker.

2. One member who is certified under ch. 457 as an independent social worker.

3. One member who is licensed under ch. 457 as a clinical social worker.

4. At least one member who is employed as a social worker by a federal, state or local governmental agency.

(b) In operation, the examining board shall be divided into a social worker section, a marriage and family therapist section and a professional counselor section. The social worker section shall consist of the 4 social worker members of the examining board and one of the public members of the examining board. The marriage and family therapist section shall consist of the 3 marriage and family therapist members of the examining board and one of the public members of the examining board. The professional counselor section shall consist of the 3 professional counselor members of the examining board and one of the public members of the examining board.

(c) All matters pertaining to granting, denying, limiting, suspending, or revoking a certificate or license under ch. 457, and all other matters of interest to either the social worker, marriage and family therapist, or professional counselor section shall be acted upon solely by the interested section of the examining board.

(d) All matters that the examining board determines are of joint interest shall be considered by joint meetings of all sections of the examining board or of those sections to which the problem is of interest.

(e) Notwithstanding s.15.08 (4) (a), at a joint meeting of all sections of the examining board, a majority of the examining board constitutes a quorum to do business only if at least 8

members are present at the meeting. At a meeting of a section of the examining board or a joint meeting of 2 or more of the sections of the examining board, each member who is present has one vote, except as provided in par. (f).

(f) At a joint meeting of the social worker section and one or both of the other sections of the examining board, each member who is present has one vote, except that the social worker members each have three-fourths of a vote if all 4 of those members are present.

(7g) BOARD OF NURSING. There is created a board of nursing in the department of regulation and licensing. The board of nursing shall consist of the following members appointed for staggered 4-year terms: 5 currently licensed registered nurses under ch. 441; 2 currently licensed practical nurses under ch. 441; and 2 public members. Each registered nurse member shall have graduated from a program in professional nursing and each practical nurse member shall have graduated from a program in practical nursing accredited by the state in which the program was conducted.

(7m) NURSING HOME ADMINISTRATOR EXAMINING BOARD. There is created a nursing home administrator examining board in the department of regulation and licensing consisting of 9 members appointed for staggered 4-year terms and the secretary of health and family services or a designee, who shall serve as a nonvoting member. Five members shall be nursing home administrators licensed in this state. One member shall be a physician. One member shall be a nurse licensed under ch. 441. Two members shall be public members. No more than 2 members may be officials or full-time employees of this state.

(8) OPTOMETRY EXAMINING BOARD. There is created an optometry examining board in the department of regulation and licensing. The optometry examining board shall consist of 7 members appointed for staggered 4-year terms. Five of the members shall be licensed optometrists in this state. Two members shall be public members.

(9) PHARMACY EXAMINING BOARD. There is created a pharmacy examining board in the department of regulation and licensing. The pharmacy examining board shall consist of 7 members appointed for staggered 4-year terms. Five of the members shall be licensed to practice pharmacy in this state. Two members shall be public members.

(10m) PSYCHOLOGY EXAMINING BOARD. There is created in the department of regulation and licensing a psychology examining board consisting of 6 members appointed for staggered 4-year terms. Four of the members shall be psychologists licensed in this state. Each of the psychologist members shall represent a different specialty area within the field of psychology. Two members shall be public members.

(10r) REAL ESTATE APPRAISERS BOARD. (a) There is created a real estate appraisers board in the department of regulation and licensing consisting of the following members appointed for 4-year terms:

1. Three appraisers who are certified or licensed under ch. 458.

2. One assessor, as defined in s. 458.09 (1).

3. Three public members

(b) Of the appraiser members of the board, one shall be certified under s. 458.06 as a general appraiser, one shall be certified under s. 458.06 as a residential appraiser and one shall be licensed under s. 458.08 as an appraiser. No public member of the board may be connected with or have any financial interest in an appraisal business or in any other real estate-related business. Section 5.08 (1m) (am) applies to the public members of the board. No member of the board may serve more than 2 consecutive terms.

(c) Notwithstanding s.15.07 (4), a majority of the board constitutes a quorum to do business only if at least 2 of the members present are appraiser members and at least one of the members present is a public member.

(11) REAL ESTATE BOARD. There is created a real estate board in the department of regulation and licensing. The real estate board shall consist of 7 members appointed to staggered 4-year terms. Four of the members shall be real estate brokers or salespersons licensed in this state. Three members shall be public members. Section 15.08 (1m) (am) applies to the public members of the real estate board. No member may serve more than 2 terms. The real estate board does not have rule-making authority.

(12) VETERINARY EXAMINING BOARD. There is created a veterinary examining board in the department of regulation and licensing. The veterinary examining board shall consist of 8

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members appointed for staggered 4-year terms. Five of the members shall be licensed veterinarians in this state. One member shall be a veterinary technician certified in this state. Two members shall be public members. No member of the examining board may in any way be financially interested in any school having a veterinary department or a course of study in veterinary or animal technology.

(16) FUNERAL DIRECTORS EXAMINING BOARD. There is created a funeral directors examining board in the department of regulation and licensing. The funeral directors examining board shall consist of 6 members appointed for staggered 4-year terms. Four members shall be licensed funeral directors under ch. 445 in this state. Two members shall be public members.

(17) BARBERING AND COSMETOLOGY EXAMINING BOARD. There is created a barbering and cosmetology examining board in the department of regulation and licensing. The barbering and cosmetology examining board shall consist of 9 members appointed for 4-year terms. Four members shall be licensed barbers or cosmetologists, 2 members shall be public members, one member shall be a representative of a private school of barbering or cosmetology, one member shall be a representative of a public school of barbering or cosmetology and one member shall be a licensed electrologist. Except for the 2 members representing schools, no member may be connected with or have any financial interest in a barbering or cosmetology school.

History: 1973 c. 90, 156; 1975 c. 39, 86, 199, 200, 383,422; 1977 c. 26, 29, 203; 1977 c. 418; 1979 c. 34 ss. 45, 47 to 52; 1979 c. 221, 304; 1981 c. 94 ss. 5, 9; 1981 c. 356; 1983 a. 27,403,485,538; 1985 a. 340; 1987 a. 257 s. 2; 1987 a. 264,265,316; 1989 a. 316,340; 1991 a. 39, 78, 160, 189, 269; 1993 a. 16, 102,463,465,491; 1995 a. 27 s. 9126 (19); 1995 a. 225; 1995 a. 305 s. 1; 1995 a. 321,417; 1997 a. 96,252, 300; 2001 a. 16, 80.

A medical school instructor serving without compensation is ineligible to serve on the board of medical examiners. 62 Atty. Gen. 193.

An incumbent real estate examining board member is entitled to hold over in office until a successor is duly appointed and confirmed by the senate. The board was without authority to reimburse the nominee for expenses incurred in attending a meeting during an orientation period prior to confirmation. 63 Atty. Gen. 192.

15.406 Same; attached affiliated credentialing boards.(1) PHYSICAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a physical therapists affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three physical therapists who are licensed under subch. III of ch. 448.

(am) One physical therapist assistant licensed under subch. III of ch. 448.

Note: Par. (am) is created ~~¶¶~~ 4-1-04 by 2001 Wis. Act 70.

(b) One public member.

(2) DIETITIANS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a dietitians affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three dietitians who are certified under subch. V of ch. 448.

(b) One public member.

(3) PODIATRISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, a podiatrists affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three podiatrists who are licensed under subch. IV of ch. 448.

(b) One public member.

(4) ATHLETIC TRAINERS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an athletic trainers affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Four athletic trainers who are licensed under subch. VI of ch. 448 and who have not been issued a credential in athletic training by a governmental authority in a jurisdiction outside this state. One of the athletic trainer members may also be licensed under ch. 446 or 447 or subch. II, III or IV of ch. 448.

(b) One member who is licensed to practice medicine and surgery under subch. III of ch. 448 and who has experience with athletic training and sports medicine.

(c) One public member.

(5) OCCUPATIONAL THERAPISTS AFFILIATED CREDENTIALING BOARD. There is created in the department of regulation and licensing, attached to the medical examining board, an occupational therapists affiliated credentialing board consisting of the following members appointed for 4-year terms:

(a) Three occupational therapists who are licensed under subch. VII of ch. 448.

(b) Two occupational therapy assistants who are licensed under subch. VI of ch. 448.

(c) Two public members.

History: 1993 a. 107,443; 1997 a. 75,175; 1999 a. 9, 180; 2001 a. 70.

15.407 Same; councils.(1m) RESPIRATORY CARE PRACTITIONERS EXAMINING COUNCIL. There is created a respiratory care practitioners examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity in the formulating of rules to be promulgated by the medical examining board for the regulation of respiratory care practitioners. The respiratory care practitioners examining council shall consist of 3 certified respiratory care practitioners, each of whom shall have engaged in the practice of respiratory care for at least 3 years preceding appointment, one physician and one public member. The respiratory care practitioner and physician members shall be appointed by the medical examining board. The members of the examining council shall serve 3-year terms. Section 15.08 (1) to (4) (a) and (6) to (10) shall apply to the respiratory care practitioners examining council.

(2) COUNCIL ON PHYSICIAN ASSISTANTS. There is created a council on physician assistants in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council's membership shall consist of:

(a) The vice chancellor for health sciences of the University of Wisconsin-Madison or the vice chancellor's designee.

(b) One public member appointed by the governor for a 2-year term.

(c) Three physician assistants selected by the medical examining board for staggered 2-year terms.

(2m) PERFUSIONISTS EXAMINING COUNCIL. There is created a perfusionists examining council in the department of regulation and licensing and serving the medical examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Three licensed perfusionists appointed by the medical examining board.

(b) One physician who is a cardiothoracic surgeon or a cardiovascular anesthesiologist and who is appointed by the medical examining board.

(c) One public member appointed by the governor.

(3) EXAMINING COUNCILS; BOARD OF NURSING. The following examining councils are created in the department of regulation and licensing to serve the board of nursing in an advisory capacity. Section 15.08 (1) to (4) (a) and (6) to (10), applies to the examining councils.

(a) **Registered nurses.** There is created an examining council on registered nurses to consist of 4 registered nurses of not less than 3 years' experience in nursing, appointed by the board of nursing for staggered 4-year terms.

(b) **Practical nurses.** There is created an examining council on licensed practical nurses to consist of one registered nurse, 3 licensed practical nurses and one registered nurse who is a faculty member of an accredited school for practical nurses, appointed by the board of nursing for staggered 3-year terms. No member may be a member of the examining council on registered nurses.

(4) COUNCIL ON SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY. There is created a council on speech-language pathology and audiology in the department of regulation and licensing and serving the hearing and speech examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Three speech-language pathologists licensed under subch. III of ch. 459.

(b) Two audiologists licensed under subch. III of ch. 459.

(5) COUNCIL ON REAL ESTATE CURRICULUM AND EXAMINATIONS. There is created in the department of regulation and licensing a council on real estate curriculum and examinations consisting of 7 members appointed for 4-year terms. Five members shall be real

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estate brokers or salespersons licensed under ch. 452 and 2 members shall be public members. Of the real estate broker or salesperson members, one member shall be a member of the real estate board appointed by the real estate board, at least 2 members shall be licensed real estate brokers with at least 5 years of experience as real estate brokers, and at least one member shall be a licensed real estate salesperson with at least 2 years of experience as a real estate salesperson. Of the 2 public members, at least one member shall have at least 2 years of experience in planning or presenting real estate educational programs. No member of the council may serve more than 2 consecutive terms.

(6) PHARMACIST ADVISORY COUNCIL. There is created a pharmacist advisory council in the department of regulation and licensing and serving the pharmacy examining board in an advisory capacity. The council shall consist of the following members appointed for 3-year terms:

(a) Two pharmacists licensed under ch. 450 appointed by the chairperson of the pharmacy examining board.

(b) One physician licensed under subch. III of ch. 448 appointed by the chairperson of the medical examining board.

(c) One nurse licensed under ch. 441 appointed by the chairperson of the board of nursing.

(7) MASSAGE THERAPY AND BODYWORK COUNCIL. (a) There is created a massage therapy and bodywork council in the department of regulation and licensing, serving the department in an advisory capacity. The council shall consist of 7 members, appointed for 4-year terms, who are massage therapists or bodyworkers certified under ch. 460 and who have engaged in the practice of massage therapy or bodywork for at least 2 years preceding appointment.

(b) In appointing members under par. (a), the governor shall ensure, to the maximum extent practicable, that the membership of the council is diverse, based on all of the following factors:

1. Massage or bodywork therapies practiced in this state.

2. Affiliation and nonaffiliation with a professional association for the practice of massage therapy or bodywork.

3. Professional associations with which massage therapists or bodyworkers in this state are affiliated.

4. Practice in urban and rural areas in this state.

Note: Sub. (7) is created eff. 3-1-03 by 2001 Wis. Act 74.

History: 1973 c. 149; 1975 c. 39, 86, 199, 383, 422; 1977 c. 418; 1979 c. 34 ss. 46, 53; 1981 c. 390 s. 252; 1985 a. 332 s. 251 (1); 1987 a. 399; 1989 a. 229, 316, 341, 359; 1991 a. 316; 1993 a. 105, 107; 1997 a. 68, 175; 1997 a. 237 s. 72; 1999 a. 32, 180, 186; 2001 a. 74, 89.

CHAPTER 19
GENERAL DUTIES OF PUBLIC OFFICIALS
SUBCHAPTER II
PUBLIC RECORDS AND PROPERTY

19.34 Procedural information

19.34 Procedural information. (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least **48** hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least **2** consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) **An** authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub.(1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

History: 1981 c. 335.

CHAPTER 48

CHILDREN'S CODE

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Cross-reference: See s. 46.011 for definitions applicable to chs. 46, 48, 51, 55 and 58.

NOTE: 1995 Wis. Act 275, which made major revisions of Chapter 48, contains extensive explanatory notes.

SUBCHAPTER I

GENERAL PROVISIONS

48.01 Title and legislative purpose. **(1)** This chapter may be cited as "The Children's Code". In construing this chapter, the best interests of the child or unborn child shall always be of paramount consideration. This chapter shall be liberally construed to effectuate the following express legislative purposes:

(a) While recognizing that the paramount goal of this chapter is to protect children and unborn children, to preserve the unity of the family, whenever appropriate, by strengthening family life through assisting parents and the expectant mothers of unborn children, whenever appropriate, in fulfilling their responsibilities as parents or expectant mothers. The courts and agencies responsible for child welfare, while assuring that a child's health and safety are the paramount concerns, should assist parents and the expectant mothers of unborn children in changing any circumstances in the home which might harm the child or unborn child, which may require the child to be placed outside the home or which may require the expectant mother to be taken into custody. The courts should recognize that they have the authority, in appropriate cases, not to reunite a child with his or her family. The courts and agencies responsible for child welfare should also recognize that instability and impermanence in family relationships

are contrary to the welfare of children and should therefore recognize the importance of eliminating the need for children to wait unreasonable periods of time for their parents to correct the conditions that prevent their safe return to the family.

(ad) To provide judicial and other procedures through which children and all other interested parties are assured fair hearings and their constitutional and other legal rights are recognized and enforced, while protecting the public safety.

(ag) To recognize that children have certain basic needs which must be provided for, including the need for adequate food, clothing and shelter; the need to be free from physical, sexual or emotional injury or exploitation; the need to develop physically, mentally and emotionally to their potential; and the need for a safe and permanent family. It is further recognized that, under certain circumstances, in order to ensure that the needs of a child, as described in this paragraph, are provided for, the court may determine that it is in the best interests of the child for the child to be removed from his or her parents, consistent with any applicable law relating to the rights of parents.

(am) To recognize that unborn children have certain basic needs which must be provided for, including the need to develop physically to their potential and the need to be free from physical harm due to the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. It is further recognized that, when an expectant mother of an unborn child suffers from a habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, in order to ensure that the needs of the unborn child, as described in this paragraph, are provided

for, the court may determine that it is in the best interests of the unborn child for the expectant mother to be ordered to receive treatment, including inpatient treatment, for that habitual lack of self-control, consistent with any applicable law relating to the rights of the expectant mother.

(ap) To recognize the compelling need to reduce the harmful financial, societal and emotional impacts that arise and the tremendous burdens that are placed on families and the community and on the health care, social services, educational and criminal justice systems as a result of the habitual lack of self-control of expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, during all stages of pregnancy.

(bg) 1. To ensure that children are protected against the harmful effects resulting from the absence of parents or parent substitutes, from the inability, other than financial inability, of parents or parent substitutes to provide care and protection for their children and from the destructive behavior of parents or parent substitutes in providing care and protection for their children.

2. To ensure that children are provided good substitute parental care in the event of the absence, temporary or permanent inability, other than financial inability, or unfitness of parents to provide care and protection for their children.

(bm) To ensure that unborn children are protected against the harmful effects resulting from the habitual lack of self-control of their expectant mothers in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree. To effectuate this purpose and the purpose specified in par. (am), it is the intent of the legislature that the provisions of this chapter that protect unborn children against those harmful effects and that provide for the needs of unborn children, as described in par. (am), shall be construed to apply throughout an expectant mother's pregnancy to the extent that application of those provisions throughout an expectant mother's pregnancy is constitutionally permissible and that expectant mothers who habitually lack self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, be encouraged to seek treatment for that habitual lack of self-control voluntarily when voluntary treatment would be practicable and effective.

(br) To encourage innovative and effective prevention, intervention and treatment approaches, including collaborative community efforts and the use of community-based programs, as significant strategies in planning and implementing legislative, executive and local government policies and programs relating to children and their families and substitute families and to unborn children and their expectant mothers.

(dm) To divert children and unborn children from formal proceedings under this chapter to the extent that this is consistent with protection of children, unborn children and the public safety.

(f) To assure that children pending adoptive homes will be placed in the best homes available and protected from adoption by persons unfit to have responsibility for raising children.

(gg) To promote the adoption of children into safe and stable families rather than allowing children to remain in the impermanence of foster or treatment foster care.

(gr) To allow for the termination of parental rights at the earliest possible time after rehabilitation and reunification efforts are discontinued in accordance with this chapter and termination of parental rights is in the best interest of the child.

(gt) To reaffirm that the duty of a parent to support and maintain his or her child continues during any period in which the child may be removed from the custody of the parent.

(2) In proceedings involving an American Indian child, the best interests of the child shall be determined consistent with the Indian child welfare act, 25 USC 1901 to 1963. In this subsection, "American Indian child" means any unmarried person who is under 18 years of age and who is one of the following:

(a) A member of an Indian tribe, as defined in 25 USC 1903 (8).

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

History: 1977 c. 354; 1979 c. 330; 1981 c. 81; 1985 a. 311; 1987 a. 383; 1989 a. 11; 1993 a. 446; 1995 a. 17,275; 1997 a. 237,292; 1999 a. 32.

The "best interests of the child" is a question of law. *Adoption of Tachick*, 60 Wis. 2d 510, 210 N.W.2d 865 (1973).

The "paramount consideration" of the child's best interest does not mandate that the child's interests will always outweigh the public's. *In Interest of B.B.* 166 Wis. 2d 202, 479 N.W.2d 205 (Ct. App. 1991).

Jurisdictional questions relating to the Indian child welfare act are discussed. 70 Atty. Gen. 237.

Adoption and termination proceedings in Wisconsin: Straining the wisdom of Solomon. *Hayes and Morse*, 66 MLK 139 (1983).

The Indian child welfare act—tribal self-determination through participation in child custody proceedings. 1979 WLR 1202.

48.02 Definitions. In this chapter, unless otherwise defined:

(1) "Abuse", other than when used in referring to abuse of alcohol beverages or other drugs, means any of the following:

(a) Physical injury inflicted on a child by other than accidental means.

(am) When used in referring to an unborn child, serious physical harm inflicted on the unborn child, and the risk of serious physical harm to the child when born, caused by the habitual lack of self-control of the expectant mother of the unborn child in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

(b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025.

(c) A violation of s. 948.05.

(d) Permitting, allowing or encouraging a child to violate s. 944.30.

(e) A violation of s. 948.055.

(f) A violation of s. 948.10.

(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected; refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

(1d) "Adult" means a person who is 18 years of age or older, except that for purposes of investigating or prosecuting a person who is alleged to have violated any state or federal criminal law or any civil law or municipal ordinance, "adult" means a person who has attained 17 years of age.

(le) "Alcohol and other drug abuse impairment" means a condition of a person which is exhibited by characteristics of habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs to the extent that the person's health is substantially affected or endangered or the person's social or economic functioning is substantially disrupted.

(lm) "Alcoholism" has the meaning given in s. 5.1.01 (lm).

(ls) "Approved treatment facility" has the meaning given in s. 51.01 (2).

(2) "Child" means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "child" does not include a person who has attained 17 years of age.

(2d) "Controlled substance" has the meaning given in s. 961.01 (4).

(2e) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(2g) "County department" means a county department under s. 46.22 or 46.23, unless the context requires otherwise.

(2m) "Court", when used without further qualification, means the court assigned to exercise jurisdiction under this chapter and ch. 938.

(3) “Court intake worker” means any person designated to provide intake services under s. 48.067.

(4) “Department” means the department of health and family services.

(5) “Developmentally disabled” means having a developmental disability, as defined in s. 51.01 (5).

(5g) “Drug dependent” has the meaning given in s. 51.01 (8).

(5j) “Emotional damage” means harm to a child’s psychological or intellectual functioning. “Emotional damage” shall be evidenced by one or more of the following characteristics exhibited to a severe degree: anxiety; depression; withdrawal; outward aggressive behavior; or a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child’s age and stage of development.

(5m) “Foreign jurisdiction” means a jurisdiction outside of the United States.

(6) “Foster home” means any facility that is operated by a person required to be licensed by s. 48.62 (1) (a) and that provides care and maintenance for no more than 4 children or, if necessary to enable a sibling group to remain together, for no more than 6 children or, if the department promulgates rules permitting a different number of children, for the number of children permitted under those rules.

(7) “Group home” means any facility operated by a person required to be licensed by the department under s. 48.625 for the care and maintenance of 5 to 8 children, as provided in s. 48.625 (1).

(8) “Guardian” means the person named by the court having the duty and authority of guardianship.

(9s) “Integrated service plan” has the meaning given in s. 46.56 (1) (g).

(10) “Judge”, if used without further qualification, means the judge of the court assigned to exercise jurisdiction under this chapter and ch. 938.

(11) “Legal custodian” means a person, other than a parent or guardian, or an agency to whom legal custody of the child has been transferred by a court, but does not include a person who has only physical custody of the child.

(12) “Legal custody” means a legal status created by the order of a court, which confers the right and duty to protect, train and discipline the child, and to provide food, shelter, legal services, education and ordinary medical and dental care, subject to the rights, duties and responsibilities of the guardian of the child and subject to any residual parental rights and responsibilities and the provisions of any court order.

(12m) “Nonidentifying social history information” means information about a person’s birth parent that may aid the person in establishing a sense of identity. “Nonidentifying social history information” may include, but is not limited to, the following information about a birth parent, but does not include any information that would disclose the name, location or identity of a birth parent:

(a) Age at the time of the person’s birth.

(b) Nationality.

(c) Race.

(d) Education.

(e) General physical appearance.

(f) Talents, hobbies and special interests.

(h) Reason for placing the child for adoption or for the termination of parental rights.

(i) Religion.

(k) Family history.

(m) Personality traits of each parent.

(13) “Parent” means either a biological parent, a husband who has consented to the artificial insemination of his wife under s. 891.40, or a parent by adoption. If the child is a nonmarital child

who is not adopted or whose parents do not subsequently intermarry under s. 767.60, “parent” includes a person acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated to be the biological father. “Parent” does not include any person whose parental rights have been terminated.

(14) “Physical custody” means actual custody of the person in the absence of a court order granting legal custody to the physical custodian.

(14g) “Physical injury” includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined in s. 939.22 (14).

(15) “Relative” means a parent, grandparent, greatgrandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle, or aunt. This relationship shall be by blood, marriage, or adoption.

(15d) “Residential care center for children and youth” means a facility operated by a child welfare agency licensed under s. 48.60 for the care and maintenance of children residing in that facility.

(16) “Secure detention facility” means a locked facility approved by the department of corrections under s. 301.36 for the secure, temporary holding in custody of children.

(17) “Shelter care facility” means a nonsecure place of temporary care and physical custody for children, including a holdover room, licensed by the department under s. 48.66 (1) (a).

(17m) “Special treatment or care” means professional services which need to be provided to a child or his or her family to protect the well-being of the child, prevent placement of the child outside the home or meet the special needs of the child. “Special treatment or care” also means professional services which need to be provided to the expectant mother of an unborn child to protect the physical health of the unborn child and of the child when born from the harmful effects resulting from the habitual lack of self-control of the expectant mother in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree. This term includes, but is not limited to, medical, psychological or psychiatric treatment, alcohol or other drug abuse treatment or other services which the court finds to be necessary and appropriate.

(17q) “Treatment foster home” means any facility that is operated by a person required to be licensed under s. 48.62 (1) (b), that is operated under the supervision of the department, a county department or a licensed child welfare agency, and that provides to no more than 4 children care, maintenance and structured, professional treatment by trained individuals, including the treatment foster parents.

(18) “Trial” means a fact-finding hearing to determine jurisdiction.

(19) “Unborn child” means a human being from the time of fertilization to the time of birth.

History: 1971 c. 41 s. 12; 1971 c. 164; 1973 c. 263; 1977 c. 205, 299, 354, 418, 437, 449; 1979 c. 135, 300, 352; 1981 c. 81; 1983 a. 189, 447, 471; 1985 a. 176; 1987 a. 27, 285, 339; 1989a. 31; Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1989 a. 107; 1991 a. 39; 1993a. 98, 375, 377, 385, 446, 491; 1995 a. 27 ss. 2423 to 2426p, 9126 (19). 9145 (1); 1995 a. 77, 275, 352, 448; 1997 a. 27, 104, 191, 292; 1999 a. 9; 2001 a. 16, 59, 69.

Cross-reference: See s. 46.011 for definitions applicable to chs. 46 to 51. 55 and 58.

Under sub. (13), a deceased parent continues to be parent: a deceased parent’s parents continue to be grandparents. Grandparental Visitation of C.G.F. 168 Wis. 2d 62, N.W.2d 803 (1992).

A viable fetus is not a “person” within the definition of a child under sub. (2). State ex rel. Angela M.W. v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

Due process and equal protection; classifications based on illegitimacy. Bazos, 1973 WLR 908.

48,023 Guardianship. Except as limited by an order of the court under s. 48.977 (5) (b) or 48.978 (6) (b) 2., a person appointed by the court to be the guardian of a child under this chapter has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child and the duty to be concerned about the child’s general welfare, including but not limited to:

(1) The authority to consent to marriage, enlistment in the U.S. armed forces, major medical, psychiatric and surgical treatment, and obtaining a motor vehicle operator's license.

(2) The authority to represent the child in legal actions and make other decisions of substantial legal significance concerning the child but not the authority to deny the child the assistance of counsel as required by this chapter.

(3) The right and duty of reasonable visitation of the child.

(4) The rights and responsibilities of legal custody except when legal custody has been vested in another person or when the child is under the supervision of the department of corrections under s. 938.183, 938.34 (4h), (4m) or (4n) or 938.357 (4) or the supervision of a county department under s. 938.34 (4d) or (4n).

History: 1977 c. 354; 1993 a. 335; 1995 a. 27, 77, 275, 352; 1997 a. 334.

A guardian may not recover for the loss of society and companionship of a ward, nor may the guardian bring a separate claim for costs incurred or income lost on account of injuries to the ward. *Conant v. Physicians Plus Medical Group, Inc.* 229 Wis. 2d 271, 600 N.W.2d 21 (Ct. App. 1999).

A guardian has general authority to consent to medication for a ward, but may consent to psychotropic medication only in accordance with ss. 380.07 (1m) and 830.33 (4m) and (4r). The guardian's authority to consent to medication or medical treatment of any kind is not affected by an order for protective placement or services. **OAG** 5-99.

48.025 Declaration of paternal interest in matters affecting children. (1) Any person claiming to be the father of a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting such child.

(2) The declaration provided in sub. (1) may be filed at any time except after a termination of the father's rights under subch. VIII. The declaration shall be in writing, signed by the person filing the declaration and shall contain the person's name and address, the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.

(3) A copy of a declaration filed with the department under sub. (1) shall be sent to the mother at her last-known address. Nonreceipt of such copy shall not affect the validity of the declaration. The mother may send a written response to the declaration to the department, and the written response shall be filed with the declaration. Failure to send a written response shall not constitute an admission of the statements contained in the declaration.

(4) Filing a declaration under this section shall not extend parental rights to the person filing such declaration.

History: 1973 c. 263; 1979 c. 330; 1981 c. 359; 1983 a. 447.

The constitutional rights of a putative father to establish his parentage and assert parental rights. 58 MLR 175.

48.027 Child custody jurisdiction. All proceedings relating to the custody of children shall comply with the requirements of ch. 822.

History: 1975 c. 1-83.

48.028 Custody of Indian children. The Indian child welfare act, 25 USC 1911 to 1963, supersedes the provisions of this chapter in any child custody proceeding governed by that act.

History: 1981 c. 81.

When the children's code provides safeguards in addition to those in the Indian child welfare act, those safeguards should be followed. In *Re Interest of D.S.P.* 166 Wis. 2d 464, 480 N.W.2d 234 (1992).

48.029 Pregnancy testing prohibited. No law enforcement agency, district attorney, corporation counsel, county department, licensed child welfare agency or other person involved in the investigation or prosecution of an allegation that an unborn child has been the victim of or is at substantial risk of abuse may, without a court order, require a person to take a pregnancy test in connection with that investigation or prosecution.

History: 1997 a. 292.

48.03 Time and place of court; absence or disability of judge; court of record. (1) The judge shall set apart a time and place to hold court on juvenile matters.

(2) In the case of the absence or disability of the judge of a court assigned to exercise jurisdiction under this chapter and ch. 938, another judge shall be assigned under s. 751.03 to act temporarily in the judge's place. If the judge assigned temporarily is from a circuit other than the one for which elected, the judge shall receive expenses as provided under s. 753.073.

History: 1971 c. 46; 1977 c. 187 s. 135; 1977 c. 273, 449; 1989 a. 56; 1995 a. 77.

48.035 Court; Menominee and Shawano counties.

Menominee County is attached to Shawano County for judicial purposes to the extent of the jurisdiction and functions of the court assigned to exercise jurisdiction under this chapter and ch. 938 and the office and functions of the judge of the court: and the duly designated judge of the court assigned to exercise jurisdiction under this chapter and ch. 938 of the circuit court for Menominee and Shawano counties shall serve in both counties. The county boards of Menominee County and Shawano County shall enter into an agreement on administration of this section and the prorating of expenditures involved, and for such purposes the county board of supervisors of Menominee County may appropriate, levy and collect a sum each year sufficient to pay its share of the expenses. If the 2 county boards are unable to agree on the prorating of expenditure involved, then the circuit judges for the circuit court for Menominee and Shawano counties shall, upon appropriate notice and hearing, determine the prorating of the expenditures on the basis of a fair allocation to each county under such procedure as they prescribe. If the circuit judges are unable to agree, the chief judge of the judicial administrative district shall make the determination.

History: 1977 c. 449; 1995 a. 77.

48.04 Employees of court. If the county contains one or more cities of the 2nd or 3rd class, the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district, may appoint, by an instrument in writing, filed with the county clerk, a clerk of court for juvenile matters and such deputies as may be needed, who shall perform the duties of clerk and reporter of the court as directed by the judges. The clerk and deputies shall take and file the official oath and shall receive such salary as the county board of supervisors determines.

History: 1977 c. 354, 449; 1985 a. 176; 1999 a. 83.

48.06 Services for court. (1) COUNTIES WITH A POPULATION OF 500,000 OR MORE. (a) 1. In counties with a population of 500,000 or more, the department shall provide the court with the services necessary for investigating and supervising child welfare and unborn child welfare cases under this chapter. The department is charged with providing child welfare and unborn child welfare intake and dispositional services and with administration of the personnel and services of the child welfare and unborn child welfare intake and dispositional sections of the department. The department shall include investigative services for all children and unborn children alleged to be in need of protection or services to be provided by the department.

2. The chief judge of the judicial administrative district shall formulate written judicial policy governing intake and court services for child welfare matters under this chapter and the department shall be charged with executing the judicial policy. The chief judge shall direct and supervise the work of all personnel of the court, except the work of the district attorney or corporation counsel assigned to the court.

3. The county board of supervisors does not have authority and may not assert jurisdiction over the disposition of any case,

child, unborn child or expectant mother of an unborn child after a written order is made under s. 48.21 or 48.213 or if a petition is filed under s. 48.25.

(am) 1. All intake workers providing services under this chapter who begin employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this subdivision according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers who provide services under this chapter to satisfy the requirements specified under subd. 1.

3. Each intake worker providing services under this chapter whose responsibilities include investigation or treatment of child abuse or neglect or unborn child abuse shall successfully complete additional training in child abuse and neglect and unborn child abuse protective services approved by the department under s. 48.981 (8) (d). Not more than 4 hours of the additional training may be applied to the requirement under subd. 1.

(2) COUNTIES WITH A POPULATION UNDER 500,000. (a) In counties having less than 500,000 population, the county board of supervisors shall authorize the county department or court or both to provide intake services required by s. 48.067 and the staff needed to carry out the objectives and provisions of this chapter under s. 48.069. Intake services shall be provided by employees of the court or county department and may not be subcontracted to other individuals or agencies, except any county which had intake services subcontracted from the county sheriff's department on April 1, 1980, may continue to subcontract intake services from the county sheriff's department. Intake workers shall be governed in their intake work, including their responsibilities for recommending the filing of a petition and entering into an informal disposition, by general written policies which shall be formulated by the circuit judges for the county, subject to the approval of the chief judge of the judicial administrative district.

(b) 1. All intake workers providing services under this chapter who begin employment after May 15, 1980, shall have the qualifications required to perform entry level social work in a county department and shall have successfully completed 30 hours of intake training approved or provided by the department prior to the completion of the first 6 months of employment in the position. The department shall monitor compliance with this paragraph according to rules promulgated by the department.

2. The department shall make training programs available annually that permit intake workers who provide services under this chapter to satisfy the requirements specified under subd. 1.

(c) Each intake worker providing services under this chapter whose responsibilities include investigation or treatment of child abuse or neglect or unborn child abuse shall successfully complete additional training in child abuse and neglect and unborn child abuse protective services approved by the department under s. 48.981 (8) (d). Not more than 4 hours of the additional training may be applied to the requirement under par. (b).

(3) INTAKE SERVICES. The court, the department in a county having a population of 500,000 or more or the county department responsible for providing intake services under s. 48.067 shall specify one or more persons to provide intake services. If there is more than one such worker, one of the workers shall be designated as chief worker and shall supervise other workers.

(4) STATE AID. State aid to any county for court services under this section shall be at the same net effective rate that each county is reimbursed for county administration under s. 46.495. Counties having a population of less than 500,000 may use funds received under s. 36.495 (1) (d), including county or federal revenue sharing funds allocated to match funds received under s. 46.495 (1) (d), for the cost of providing court attached intake services in

amounts not to exceed 50% of the cost of providing court attached intake services or \$30,000 per county per calendar year, whichever is less.

History: 1971 c. 125; 1975 c. 39, 199, 302, 307, 422; 1977 c. 271; 1977 c. 354 ss. 10 to 14, 101; 1977 c. 447, 449; 1979 c. 34, 300 1981 c. 20 s. 2202 (20) (o); 1981 c. 93 s. 186; 1981 c. 314, 329; 1983 a. 239; 1985 a. 29, 176; 1987 a. 151, 399; 1991 a. 274; 1995 a. 27; 1997 a. 27, 80, 292; 2001 a. 61.

Cross Reference: See also ch. HSS 49. Wis. adm. code.

48.067 Powers and duties of intake workers. To carry out the objectives and provisions of this chapter but subject to its limitations, intake workers shall:

(1) Provide intake services 24 hours a day, 7 days a week, for the purpose of screening children taken into custody and not released under s. 48.20 (2) and the adult expectant mothers of unborn children taken into custody and not released under s. 48.203 (1).

(2) Interview, unless impossible, any child or expectant mother of an unborn child who is taken into physical custody and not released, and when appropriate interview other available concerned parties. If the child cannot be interviewed, the intake worker shall consult with the child's parent or a responsible adult. If an adult expectant mother of an unborn child cannot be interviewed, the intake worker shall consult with an adult relative or friend of the adult expectant mother. No child may be placed in a secure detention facility unless the child has been interviewed in person by an intake worker, except that if the intake worker is in a place which is distant from the place where the child is or the hour is unreasonable, as defined by written court intake rules, and if the child meets the criteria under s. 48.208, the intake worker, after consulting by telephone with the law enforcement officer who took the child into custody, may authorize the secure holding of the child while the intake worker is en route to the in-person interview or until 8 a.m. of the morning after the night on which the child was taken into custody.

(3) Determine whether the child or the expectant mother of an unborn child shall be held under s. 48.205 and such policies as the judge shall promulgate under s. 48.06 (1) or (2).

(4) If the child or the expectant mother of an unborn child is not released, determine where the child or expectant mother shall be held.

(5) Provide crisis counseling during the intake process when such counseling appears to be necessary.

(6) Receive referral information, conduct intake inquiries, request that a petition be filed, and enter into informal dispositions under policies promulgated under s. 48.06 (1) or (2).

(6m) Conduct the multidisciplinary screen in counties that have an alcohol and other drug abuse program under s. 48.547.

(7) Make referrals of cases to other agencies if their assistance appears to be needed or desirable.

(7m) At the request of a minor who claims to be pregnant, assist the minor in preparing a petition to initiate a proceeding under s. 48.375 (7) and file the petition with the clerk of circuit court.

(8) Make interim recommendations to the court concerning children, and unborn children and their expectant mothers, awaiting final disposition under s. 48.355.

(9) Perform any other functions ordered by the court, and assist the court or chief judge of the judicial administrative district in developing written policies or carrying out its other duties when the court or chief judge so requests.

History: 1977 c. 354, 449; 1979 c. 300; 1987 a. 151, 339; 1991 a. 263; 1993 a. 98; 1997 a. 80, 292; 1999 a. 83.

48.069 Powers and duties of disposition staff. (1) The staff of the department, the court, a county department or a licensed child welfare agency designated by the court to carry out the objectives and provisions of this chapter, or, in a county having a population of 500,000 or more, the department or an agency

under contract with the department to provide dispositional services, shall:

(a) Supervise and assist a child and the child's family or the expectant mother of an unborn child pursuant to informal dispositions, a consent decree or order of the court.

(b) Offer individual and family counseling.

(c) Make an affirmative effort to obtain necessary or desired services for the child and the child's family or for the expectant mother of an unborn child and investigate and develop resources toward that end.

(d) Prepare reports for the court recommending a plan of rehabilitation, treatment and care.

(e) Perform any other functions consistent with this chapter which are ordered by the court.

(2) Except in a county having a population of 500,000 or more, licensed child welfare agencies and the department shall provide services under this section only upon the approval of the agency from whom services are requested. In a county having a population of 500,000 or more, the department or, with the approval of the department, a licensed child welfare agency shall provide services under this section.

(3) A court or county department responsible for disposition staff or, in a county having a population of 500,000 or more, the department may agree with the court or county department responsible for providing intake services that the disposition staff may be designated to provide some or all of the intake services.

(4) Disposition staff employed to perform the duties specified in sub. (1) after November 18, 1978 shall have the qualifications required under the county merit system.

History: 1977 c. 354; 1979 c. 300; 1985 a. 176; 1989 a. 31, 107; 1993 a. 98, 385; 1995 a. 27 ss. 2428m, 2428p, 9126 (19); 1995 a. 77; 1997 a. 27, 292.

48.07 Additional sources of court services. If the county board of supervisors has complied with s. 48.06, the court may obtain supplementary services for investigating cases and providing supervision of cases from one or more of the following sources:

(2) **LICENSED CHILD WELFARE AGENCY.** The court may request the services of a child welfare agency licensed under s. 48.60 in accordance with procedures established by that agency. The child welfare agency shall receive no compensation for these services but may be reimbursed out of funds made available to the court for the actual and necessary expenses incurred in the performance of duties for the court.

(3) **THE DEPARTMENT IN POPULOUS COUNTIES.** In counties having a population of 500,000 or more, the department may be ordered by the court to provide services for furnishing emergency shelter care to any child whose need therefor is determined by the intake worker under s. 48.205. The court may authorize the department to appoint members of the department to furnish emergency shelter care services for the child. The emergency shelter care may be provided as specified in s. 48.207.

(4) **COUNTY DEPARTMENTS THAT PROVIDE DEVELOPMENTAL DISABILITIES, MENTAL HEALTH OR ALCOHOL AND OTHER DRUG ABUSE SERVICES.** Within the limits of available state and federal funds and of county funds appropriated to match state funds, the court may order county departments established under s. 51.42 or 51.437 to provide special treatment or care to a child if special treatment or care has been ordered under s. 48.345 (6) and if s. 48.362 (4) applies or to provide special treatment or care to the expectant mother of an unborn child if special treatment or care has been ordered under s. 48.347 (4) and if s. 48.362 (4) applies.

(5) **COURT-APPOINTED SPECIAL ADVOCATE PROGRAM.** (a) *Memorandum of understanding.* The court may obtain the services of a court-appointed special advocate program that has been recognized by the chief judge of the judicial administrative district. A chief judge of a judicial administrative district may recognize a court-appointed special advocate program by entering into a memorandum of understanding with the court-appointed special

advocate program that specifies the responsibilities of the court-appointed special advocate program and of a court-appointed special advocate designated under s. 48.236 (1). The memorandum of understanding shall specify that the court-appointed special advocate program is responsible for selecting, training, supervising and evaluating the volunteers and employees of the program who are authorized to provide court-appointed special advocate services as provided in pars. (b) to (d), that, in addition to any other activities specified in the memorandum of understanding, a volunteer or employee of the program who is authorized to provide court-appointed special advocate services may be designated to perform any of the activities specified in s. 48.236 (3) (a) to (c) and that, in addition to any other authority specified in the memorandum of understanding, a volunteer or employee of the program who is authorized to provide court-appointed special advocate services may be authorized to exercise any of the authority specified in s. 48.236 (4) (a) and (b), unless the parties to the memorandum of understanding determine that a variance from the requirements of pars. (b) to (d), the activities specified in s. 48.236 (3) (a) to (c) or the authority specified in s. 48.236 (4) (a) and (b) is necessary for the efficient administration of the program.

(b) *Selection.* 1. A court-appointed special advocate program may select a person to provide court-appointed special advocate services if the person is 21 years of age or older, demonstrates an interest in the welfare of children, undergoes a satisfactory background investigation as provided under subd. 2., completes the training required under par. (c) and meets any other qualifications required by the court-appointed special advocate program. A court-appointed special advocate program may refuse to permit to provide court-appointed special advocate services any person whose provision of those services might pose a risk, as determined by the court-appointed special advocate program, to the safety of any child.

2. On receipt of an application from a prospective court-appointed special advocate, the court-appointed special advocate program, with the assistance of the department of justice, shall conduct a background investigation of the applicant. If the court-appointed special advocate program determines that any information obtained as a result of the background investigation provides a reasonable basis for further investigation, the court-appointed special advocate program may require the applicant to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the applicant's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identification of the applicant and obtaining the applicant's criminal arrest and conviction record. The court-appointed special advocate program shall keep confidential all information received from the department of justice and the federal bureau of investigation under this subdivision.

(c) *Training.* A court-appointed special advocate program shall require a volunteer or employee of the program selected under par. (b) to complete a training program before the volunteer or employee may be designated as a court-appointed special advocate under s. 48.236 (1). The training program shall include instruction on recognizing child abuse and neglect, cultural competency, as defined in s. 48.982 (1) (bm), child development, the procedures of the court, permanency planning, the activities of a court-appointed special advocate under s. 48.236 (3) and information gathering and documentation, and shall include observation of a proceeding under s. 48.13. A court-appointed special advocate program shall also require each volunteer and employee of the program selected under par. (b) to complete continuing training annually.

(d) *Supervision and evaluation.* The supervisory support staff of a court-appointed special advocate program shall be easily accessible to the volunteers and employees of the program who are authorized to provide court-appointed special advocate services, shall hold regular case conferences with those volunteers

and employees to review case progress and shall conduct annual performance evaluations of those volunteers and employees. A court-appointed special advocate program shall provide its staff and volunteers with written guidelines describing the policies, practices and procedures of the program and the responsibilities of a volunteer or employee of the program who is authorized to provide court-appointed special advocate services.

History: 1975 c. 39; 1977 c. 771.354.447; 1979 c. 34; 1981 c. 314 s. 146; 1983 a. 27 s. 2202 (20); 1985 a. 176; 1989 a. 31, 107; 1993 a. 446; 1995 a. 27.77; 1997 a. 27.292; 1999 a. 119.

48.08 Duties of person furnishing services to court.

(1) It is the duty of each person appointed to furnish services to the court as provided in ss. 48.06 and 48.07 to make such investigations and exercise such discretionary powers as the judge may direct, to keep a written record of such investigations and to submit a report to the judge. Such person shall keep informed concerning the conduct and condition of a child or expectant mother of an unborn child under the person's supervision and shall report on that conduct and condition as the judge directs.

(2) Any person authorized to provide or providing intake or dispositional services for the court under ss. 48.067 and 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking a child into physical custody when the child comes voluntarily or is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from the surroundings is necessary.

(3) Any person authorized to provide or providing intake or dispositional services for the court under s. 48.067 or 48.069 has the power of police officers and deputy sheriffs only for the purpose of taking the expectant mother of an unborn child into physical custody when the expectant mother comes voluntarily or when there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree.

History: 1975 c. 302.121; 1977 c. 354; 1979 c. 300; 1985 a. 320; 1991 a. 39, 316; 1995 a. 27, 77; 1997 a. 292.

A judge may order the department to provide information on foster care placements in a county. In *Interest of J. A.* 138 Wis. 2d 483.406 N.W.2d 372 (1987).

48.09 Representation of the interests of the public.

The interests of the public shall be represented in proceedings under this chapter as follows:

(5) By the district attorney or, if designated by the county board of supervisors, by the corporation counsel, in any matter arising under s. 48.13, 48.133 or 48.977. If the county board transfers this authority to or from the district attorney on or after May 11, 1990, the board may do so only if the action is effective on September 1 of an odd-numbered year and the board notifies the department of administration of that change by January 1 of that odd-numbered year.

(6) By any appropriate person designated by the county board of supervisors in any matter arising under s. 48.14.

History: 1977 c. 354; 1985 a. 176; 1989 a. 336; 1993 a. 2-26; 1995 a. 77.275; 1997 a. 292.

48.10 Power of the judge to act as intake worker.

The duties of the intake worker may be carried out from time to time by the judge at his or her discretion, but if a request to file a petition is made or an informal disposition is entered into, the judge shall be disqualified from participating further in the proceedings.

History: 1977 c. 354; 1979 c. 331.359; 1995 a. 77; 1997 a. 80.

48.11 Advisory board. (1) The court may appoint a board of not more than 15 citizens of the county: known for their interest in the welfare of children, who shall serve without compensation, to be called the advisory board of the court. The members of the board shall hold office during the pleasure of the court. The duties of the board are:

(a) To advise and cooperate with the court upon all matters affecting the workings of this law and other laws relating to children, their care and protection.

(b) To familiarize themselves with the functions and facilities of the court under this law and to interpret to the public the work of the court.

(2) Nothing in this section shall be construed to require the court to open court records or to disclose their contents.

History: 1977 c. 449

SUBCHAPTER III

JURISDICTION

48.13 Jurisdiction over children alleged to be in need of protection or services. The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:

(1) Who is without a parent or guardian;

(2) Who has been abandoned;

(2m) Whose parent has relinquished custody of the child under s. 48.195 (1);

(3) Who has been the victim of abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another;

(3m) Who is at substantial risk of becoming the victim of abuse, as defined in s. 48.02 (1) (a), (b), (c), (d), (e) or (f), including injury that is self-inflicted or inflicted by another, based on reliable and credible information that another child in the home has been the victim of such abuse;

(4) Whose parent or guardian signs the petition requesting jurisdiction under this subsection and is unable or needs assistance to care for or provide necessary special treatment or care for the child;

(5) Who has been placed for care or adoption in violation of law;

(8) Who is receiving inadequate care during the period of time a parent is missing, incarcerated, hospitalized or institutionalized;

(9) Who is at least age 12, signs the petition requesting jurisdiction under this subsection and is in need of special treatment or care which the parent, guardian or legal custodian is unwilling, neglecting, unable or needs assistance to provide;

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child:

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home;

(11) Who is suffering emotional damage for which the parent, guardian or legal custodian has neglected, refused or been unable and is neglecting, refusing or unable, for reasons other than poverty, to obtain necessary treatment or to take necessary steps to ameliorate the symptoms;

(11m) Who is suffering from an alcohol and other drug abuse impairment, exhibited to a severe degree, for which the parent, guardian or legal custodian is neglecting, refusing or unable to provide treatment; or

(13) Who has not been immunized as required by s. 252.04 and not exempted under s. 252.04 (3).

History: 1977 c. 29, 354; 1979 c. 298, 300, 334; 1985 a. 321; 1987 a. 285, 339, 403; 1993 a. 27, 363, 395, 474; 1995 a. 77, 275; 1997 a. 80; 2001 a. 2.

NOTE: 1993 Wis. Act 395, which created subs. (3m) and (10m), contains extensive explanatory notes.

CHIPS proceedings are controlled by the Code of Civil Procedure unless ch. 48 requires a different procedure: summary judgment under s. 802.08 is available in CHIPS cases. In Interest of F.Q. 162 Wis. 2d 607, 470 N.W.2d 1 (Ct. App. 1991).

A jury verdict that children are in need of protection or services requires a separate verdict question for each of the specific jurisdictional grounds alleged. Interest of Lauran F. 194 Wis. 2d 283, 533 N.W.2d 812 (1995).

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court does not have jurisdiction over a fetus under this section. State ex rel. Angela M. W.v. Kruzicki, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by sub. (10), and at the time of the hearing the other can provide the necessary care for the children. State v. Gregory L.S. 2002 WI App 101, ___ Wis. 2d ___, 643 N.W.2d 890.

48.133 Jurisdiction over unborn children in need of protection or services and the expectant mothers of those unborn children. The court has exclusive original jurisdiction over an unborn child alleged to be in need of protection or services which can be ordered by the court whose expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control. The court also has exclusive original jurisdiction over the expectant mother of an unborn child described in this section.

History: 1997 a. 292.

48.135 Referral of children and expectant mothers of unborn children to proceedings under chapter 51 or 55.

(1) If a child alleged to be in need of protection or services or a child expectant mother of an unborn child alleged to be in need of protection or services is before the court and it appears that the child or child expectant mother is developmentally disabled, mentally ill or drug dependent or suffers from alcoholism, the court may proceed under ch. 51 or 55. If an adult expectant mother of an unborn child alleged to be in need of protection or services is before the court and it appears that the adult expectant mother is drug dependent or suffers from alcoholism, the court may proceed under ch. 51.

(2) Except as provided in ss. 48.19 to 48.21 and s. 48.345 (14), any voluntary or involuntary admissions, placements or commitments of a child made in or to an inpatient facility, as defined in s. 51.01 (10), shall be governed by ch. 51 or 55. Except as provided in ss. 48.193 to 48.213 and s. 48.347 (6), any voluntary or involuntary admissions, placements or commitments of an adult expectant mother of an unborn child made in or to an inpatient facility, as defined in s. 51.01 (10), shall be governed by ch. 51.

History: 1977 c. 354; 1977 c. 418 s. 928 (55) (c); 1977 c. 428 s. 6; 1979 c. 300; 1987 a. 339; 1995 a. 77; 1997 a. 292.

48.14 Jurisdiction over other matters relating to children. The court has exclusive jurisdiction over:

(1) The termination of parental rights to a minor in accordance with subch. VIII.

(2) The appointment and removal of a guardian of the person in the following cases:

(a) For a minor, where parental rights have been terminated under subch. VIII; or

(b) The appointment and removal of a guardian of the person for a child under ss. 48.427, 48.428, 48.43, 48.831, 48.832, 48.839 (4) (a), 48.977 and 48.978 and ch. 880 and for a child found to be in need of protection or services under s. 48.13 because the child is without parent or guardian.

(3) The adoption of children.

(5) Proceedings under chs. 51 and 55 which apply to minors and proceedings under ch. 51 which apply to the adult expectant mothers of unborn children, if those adult expectant mothers appear to be drug dependent or to suffer from alcoholism.

(6) Consent to marry under s. 765.02.

(7) Appeals under s. 115.80 (7).

(8) Runaway children, but only as provided under s. 48.227 for the limited purpose described in that section,

(9) Proceedings under s. 146.34 (5).

(10) Proceedings under s. 813.122 or 813.125 in which the respondent is a child.

(11) Granting visitation privileges under s. 880.155.

History: 1975 c. 430; 1977 c. 354, 449; 1979 c. 32 s. 92 (2); 1979 c. 300; 1979 c. 330 ss. 3, 13; 1981 c. 81 ss. 5, 33; 1985 a. 50; 1989 a. 161; 1993 a. 318; 1995 a. 38, 77, 275; 1997 a. 164, 292, 334.

If two actions between the same parties, on the same subject, to test the same rights are brought in different courts with concurrent jurisdiction, it is error for the second court to assume jurisdiction. Interest of Tiffany W. & Myokra W. 192 Wis. 2d 407, 532 N.W.2d 135 (Ct. App. 1995).

48.15 Jurisdiction of other courts to determine legal custody. Nothing contained in ss. 48.13, 48.133 and 48.14 deprives other courts of the right to determine the legal custody of children by habeas corpus or to determine the legal custody or guardianship of children if the legal custody or guardianship is incidental to the determination of causes pending in the other courts. But the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 938 is paramount in all cases involving children alleged to come within the provisions of ss. 48.13 and 48.14 and unborn children and their expectant mothers alleged to come within the provisions of ss. 48.133 and 48.14 (5).

History: 1977 c. 449; 1981 c. 289; 1995 a. 77; 1997 a. 292.

Judicial Council Note, 1981: Reference to "writs" of habeas corpus has been removed because that remedy is now available in an ordinary action. See s. 781.01, stats., and the note thereto. [Bill 613-A]

48.16 Jurisdiction over petitions for waiver of parental consent to a minor's abortion. Any circuit court within this state has jurisdiction over a proceeding under s. 48.375 (7) for waiver of the parental consent requirement under s. 48.375 (4).

History: 1991 a. 263.

48.185 Venue. (1) Subject to sub. (2), venue for any proceeding under ss. 48.13, 48.133, 48.135 and 48.14 (1) to (9) may be in any of the following: the county where the child or the expectant mother of the unborn child resides or the county where the child or expectant mother is present. Venue for proceedings brought under subch. VIII is as provided in this subsection except where the child has been placed and is living outside the home of the child's parent pursuant to a dispositional order, in which case venue is as provided in sub. (2). Venue for a proceeding under s. 48.14 (10) is as provided in s. 801.50 (5s).

(2) In an action under s. 48.41, venue shall be in the county where the birth parent or child resides at the time that the petition is filed. Venue for any proceeding under s. 48.363, 48.365 or 48.977, or any proceeding under subch. VIII when the child has been placed outside the home pursuant to a dispositional order under s. 48.345 or 48.347, shall be in the county where the dispositional order was issued, unless the child's county of residence has changed, or the parent of the child or the expectant mother of the unborn child has resided in a different county of this state for 6 months. In either case, the court may, upon a motion and for good cause shown, transfer the case, along with all appropriate records, to the county of residence of the child, parent or expectant mother.

History: 1977 c. 354; Stats. 1977 s. 48.185; 1979 c. 330; 1989 a. 161; 1993 a. 98, 318, 491; 1995 a. 77, 275; 1997 a. 80, 292.

This section does not authorize change of venue, upon motion of party or upon stipulation of parties, after adjudication but before the first dispositional hearing. 75 Atty. Gen. 100.

HOLDING A CHILD OR AN EXPECTANT MOTHER IN CUSTODY

48.19 Taking a child into custody. (1) A child may be taken into custody under any of the following:

(a) A warrant.

(b) A capias issued by a judge under s. 48.28.

(c) An order of the judge if made upon a showing satisfactory to the judge that the welfare of the child demands that the child be immediately removed from his or her present custody. The order shall specify that the child be held in custody under s. 48.207 (1).

(cm) An order of the judge if made upon a showing satisfactory to the judge that the child is an expectant mother, that due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the child expectant mother is taken into custody and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the child expectant mother be held in custody under s. 48.207 (1).

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

1. A capias or a warrant for the child's apprehension has been issued in this state, or that the child is a fugitive from justice.

2. A capias or a warrant for the child's apprehension has been issued in another state.

4. The child has run away from his or her parents, guardian or legal or physical custodian.

5. The child is suffering from illness or injury or is in immediate danger from his or her surroundings and removal from those surroundings is necessary.

7. The child has violated the conditions of an order under s. 48.21 (4) or the conditions of an order for temporary physical custody by an intake worker.

8. The child is an expectant mother and there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the child expectant mother is taken into custody.

(2) When a child is taken into physical custody as provided in this section, the person taking the child into custody shall immediately attempt to notify the parent, guardian and legal custodian of the child by the most practical means. The person taking the child into custody shall continue such attempt until the parent, guardian and legal custodian of the child are notified, or the child is delivered to an intake worker under s. 48.20 (3), whichever occurs first. If the child is delivered to the intake worker before the parent, guardian and legal custodian are notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until the parent, guardian and legal custodian of the child are notified.

(3) Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

History: 1977 c. 354, 439; 1979 c. 300; 1985 a. 176; 1989 a. 31. 56. 107; 1993 a. 16, 56, 371, 490; 1995 a. 27, 77; 1997 a. 292.

A viable fetus is not a "person" within the definition of a child under s. 48.02 (2). A court may not order protective custody of a fetus by requiring custody of the mother. *State ex rel. Angela M.W. v. Kruzicki*, 209 Wis. 2d 112, 561 N.W.2d 729 (1997).

48.193 Taking an adult expectant mother into custody.

(1) An adult expectant mother of an unborn child may be taken into custody under any of the following:

(a) A warrant.

(b) A capias issued by a judge under s. 48.28.

(c) An order of the judge if made upon a showing satisfactory to the judge that due to the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the adult expectant mother is taken into custody and that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The order shall specify that the adult expectant mother be held in custody under s. 48.207 (1m).

(d) Circumstances in which a law enforcement officer believes on reasonable grounds that any of the following conditions exists:

1. A capias or warrant for the apprehension of the adult expectant mother has been issued in this state or in another state.

2. There is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered due to the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, unless the adult expectant mother is taken into custody.

3. The adult expectant mother has violated the conditions of an order under s. 48.213 (3) or the conditions of an order for temporary physical custody by an intake worker.

(2) When an adult expectant mother of an unborn child is taken into physical custody as provided in this section, the person taking the adult expectant mother into custody shall immediately attempt to notify an adult relative or friend of the adult expectant mother by the most practical means. The person taking the adult expectant mother into custody shall continue such attempt until an adult relative or friend is notified, or the adult expectant mother is delivered to an intake worker under s. 48.203 (2), whichever occurs first. If the adult expectant mother is delivered to the intake worker before an adult relative or friend is notified, the intake worker, or another person at his or her direction, shall continue the attempt to notify until an adult relative or friend of the adult expectant mother is notified.

(3) Taking into custody is not an arrest except for the purpose of determining whether the taking into custody or the obtaining of any evidence is lawful.

History: 1997 a. 292.

48.195 Taking a newborn child into custody. (1) TAKING CHILD INTO CUSTODY.

In addition to being taken into custody under s. 18.19, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger may be taken into custody under circumstances in which a parent of the child relinquishes custody of the child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the child. If a parent who wishes to relinquish custody of his or her child under this subsection is unable to travel to a sheriff's office, police station, fire station, hospital, or other place where a law enforcement officer, emergency medical technician, or hospital staff member is located, the parent may dial the telephone number "911" or, in an area in which the telephone number "911" is not available, the number for an emergency medical service provider, and the person receiving the call shall dispatch a law enforcement officer or emergency medical technician to meet the parent and take the child into custody. A law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under this subsection

tion shall take any action necessary to protect the health and safety of the child, shall, within 24 hours after taking the child into custody, deliver the child to the intake worker under s. 48.20, and shall, within 5 days after taking the child into custody, file a birth certificate for the child under s. 69.14 (3).

(2) ANONYMITY AND CONFIDENTIALITY. (a) Except as provided in this paragraph, a parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment have the right to remain anonymous. The exercise of that right shall not affect the manner in which a law enforcement officer, emergency medical technician, or hospital staff member performs his or her duties under this section. No person may induce or coerce or attempt to induce or coerce a parent or person assisting a parent who wishes to remain anonymous into revealing his or her identity, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent is coercing the parent into relinquishing custody of the child.

(b) A parent who relinquishes custody of a child under sub. (1) and any person who assists the parent in that relinquishment may leave the presence of the law enforcement officer, emergency medical technician, or hospital staff member who took custody of the child at any time, and no person may follow or pursue the parent or person assisting the parent, unless the person has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(c) No officer, employee, or agent of this state or of a political subdivision of this state may attempt to locate or ascertain the identity of a parent who relinquishes custody of a child under sub. (1) or any person who assists the parent in that relinquishment, unless the officer, employee, or agent has reasonable cause to suspect that the child has been the victim of abuse or neglect, as defined in s. 48.981 (1) (d), or that the person assisting the parent has coerced the parent into relinquishing custody of the child.

(d) Any person who obtains any information relating to the relinquishment of a child under sub. (1) shall keep that information confidential and may not disclose that information, except to the following persons:

1. The birth parent of the child, if the birth parent has waived his or her right under par. (a) to remain anonymous, or the adoptive parent of the child, if the child is later adopted.

2. Appropriate staff of the department, county department, or licensed child welfare agency that is providing services to the child.

3. A person authorized to provide or providing intake or dispositional services under s. 48.067, 48.069, or 48.10.

4. An attending physician for purposes of diagnosis and treatment of the child.

5. The child's foster parent, treatment foster parent, or other person having physical custody of the child.

6. A court conducting proceedings under s. 48.21, proceedings relating to a petition under s. 48.13 (2m) or 48.42, or dispositional proceedings under subch. VI or VIII relating to the child, the county corporation counsel, district attorney, or agency legal counsel representing the interests of the public in those proceedings, or the guardian ad litem representing the interests of the child in those proceedings.

7. A tribal court, or other adjudicative body authorized by an American Indian tribe or band to perform child welfare functions, that is exercising jurisdiction over proceedings relating to the child, an attorney representing the interests of the American Indian tribe or band in those proceedings, or an attorney representing the interests of the child in those proceedings.

(3) INFORMATION FOR PARENT. (a) Subject to par. (b), a law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) shall make available to the parent who relinquishes custody of the child

the maternal and child health toll-free telephone number maintained by the department under 42 USC 705 (a) (5) (E).

(b) The decision whether to accept the information made available under par. (a) is entirely voluntary on the part of the parent. No person may induce or coerce or attempt to induce or coerce any parent into accepting that information.

(4) IMMUNITY FROM LIABILITY. (a) Any parent who relinquishes custody of his or her child under sub. (1) and any person who assists the parent in that relinquishment are immune from any civil or criminal liability for any good faith act or omission in connection with that relinquishment. The immunity granted under this paragraph includes immunity for exercising the right to remain anonymous under sub. (2) (a), the right to leave at any time under sub. (2) (b), and the right not to accept any information under sub. (3) (b) and immunity from prosecution under s. 948.20 for abandonment of a child or under s. 948.21 for neglecting a child.

(b) Any law enforcement officer, emergency medical technician, or hospital staff member who takes a child into custody under sub. (1) is immune from any civil liability to the child's parents, or any criminal liability for any good faith act or omission occurring solely in connection with the act of receiving custody of the child from the child's parents, but is not immune from any civil or criminal liability for any act or omission occurring in subsequently providing care for the child.

(c) In any civil or criminal proceeding, the good faith of a person specified in par. (a) or (b) is presumed. This presumption may be overcome only by clear and convincing evidence.

(5) MEDICAL ASSISTANCE ELIGIBILITY. A child who is taken into custody under sub. (1) is presumed to be eligible for medical assistance under s. 49.46 or 49.47.

(6) RULES. The department shall promulgate rules to implement this section. In promulgating those rules, the department shall consider the different circumstances under which a parent might relinquish custody of a child under sub. (1). The rules shall include rules prescribing a means by which a parent who relinquishes custody of his or her child under sub. (1) may, until the granting of an order terminating parental rights, choose to be identified as the child's parent.

History: 2001 a. 2.

48.20 Release or delivery of child from custody. (2) (ag) Except as provided in pars. (b) to (d), a person taking a child into custody shall make every effort to release the child immediately to the child's parent, guardian or legal custodian.

(b) If the child's parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, the person who took the child into custody may release the child to a responsible adult after counseling or warning the child as may be appropriate.

(c) If the child is 15 years of age or older, the person who took the child into custody may release the child without immediate adult supervision after counseling or warning the child as may be appropriate.

(d) If the child is a runaway, the person who took the child into custody may release the child to a home authorized under s. 48.227.

(3) If the child is released under sub. (2) (b) to (d), the person who took the child into custody shall immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person, if any, to whom the child was released. If the child is not released under sub. (2), the person who took the child into custody shall arrange in a manner determined by the court and law enforcement agencies for the child to be interviewed by the intake worker under s. 48.067 (2), and shall make a statement in writing with supporting facts of the reasons why the child was taken into physical custody and shall give any child 12 years of age or older a copy of the statement in addition to giving a copy to the intake worker. When the intake interview is not done in person, the report may be read to the intake worker.

(4) If the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child into physical custody, the intake worker or other appropriate person shall deliver the child to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(4m) If the child is an expectant mother and if the unborn child or child expectant mother is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the child expectant mother into physical custody, the intake worker or other appropriate person shall deliver the child expectant mother to a hospital as defined in s. 50.33 (2) (a) and (c) or physician's office.

(5) If the child is believed to be mentally ill, drug dependent or developmentally disabled, and exhibits conduct which constitutes a substantial probability of physical harm to the child or to others, or a very substantial probability of physical impairment or injury to the child exists due to the impaired judgment of the child, and the standards of s. 51.15 are met, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.15.

(6) If the child is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on himself or herself or on another and is likely to inflict such physical harm unless committed, or is incapacitated by alcohol, the person taking the child into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(7) (a) When a child is interviewed by an intake worker, the intake worker shall inform any child who is alleged to be in need of protection or services and who is 12 years of age or older of his or her right to counsel.

(b) The intake worker shall review the need to hold the child in custody and shall make every effort to release the child from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the child or to continue to hold the child in custody on the criteria specified in s. 48.205 (1) and criteria established under s. 48.06 (1) or (2).

(c) The intake worker may release the child:

1. To a parent, guardian or legal custodian, or, if the parent, guardian or legal custodian is unavailable, unwilling or unable to provide supervision for the child, release the child to a responsible adult, counseling or warning the child as may be appropriate, or, if a child is 15 years of age or older, release the child without immediate adult supervision, counseling or warning the child as may be appropriate; or

2. In the case of a runaway child, to a home authorized under s. 48.227.

(d) If the child is released from custody, the intake worker shall immediately notify the child's parent, guardian and legal custodian of the time and circumstances of the release and the person, if any, to whom the child was released.

(8) If a child is held in custody, the intake worker shall notify the child's parent, guardian and legal custodian of the reasons for holding the child in custody and of the child's whereabouts unless there is reason to believe that notice would present imminent danger to the child. The parent, guardian and legal custodian shall also be notified of the time and place of the detention hearing required under s. 48.21, the nature and possible consequences of that hearing, and the right to present and cross-examine witnesses at the hearing. If the parent, guardian or legal custodian is not immediately available, the intake worker or another person designated by the court shall provide notice as soon as possible. When the child is 12 years of age or older, the child shall receive the same notice about the detention hearing as the parent, guardian or legal custodian. The intake worker shall notify both the child and the child's parent, guardian or legal custodian. When the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., the unborn child, through the unborn child's guardian ad litem, shall receive the same notice about the where-

abouts of the child expectant mother, about the reasons for holding the child expectant mother in custody and about the detention hearing as the child expectant mother and her parent, guardian or legal custodian. The intake worker shall notify the child expectant mother, her parent, guardian or legal custodian and the unborn child, by the unborn child's guardian ad litem.

History: 1977c. 354, 449; 1979c. 300; 1983a. 189s. 329 (5); 1993a. 16, 56, 98, 385; 1995a. 27, 77; 1997a. 292.

48.203 Release or delivery of adult expectant mother from custody. (1)

A person taking an adult expectant mother of an unborn child into custody shall make every effort to release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the person taking the adult expectant mother into custody may release the adult expectant mother under the adult expectant mother's own supervision after counseling or warning the adult expectant mother as may be appropriate.

(2) If the adult expectant mother is not released under sub. (1), the person who took the adult expectant mother into custody shall arrange in a manner determined by the court and law enforcement agencies for the adult expectant mother to be interviewed by the intake worker under s. 48.067 (2), and shall make a statement in writing with supporting facts of the reasons why the adult expectant mother was taken into physical custody and shall give the adult expectant mother a copy of the statement in addition to giving a copy to the intake worker. When the intake interview is not done in person, the report may be read to the intake worker.

(3) If the unborn child or adult expectant mother is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall deliver the adult expectant mother to a hospital, as defined in s. 50.33 (2) (a) and (c), or physician's office.

(4) If the adult expectant mother is believed to be mentally ill, drug dependent or developmentally disabled, and exhibits conduct which constitutes a substantial probability of physical harm to herself or others, or a substantial probability of physical impairment or injury to the adult expectant mother exists due to the impaired judgment of the adult expectant mother, and the standards of s. 51.15 are met, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall proceed under s. 51.15.

(5) If the adult expectant mother is believed to be an intoxicated person who has threatened, attempted or inflicted physical harm on herself or on another and is likely to inflict such physical harm unless committed: or is incapacitated by alcohol, the person taking the adult expectant mother into physical custody, the intake worker or other appropriate person shall proceed under s. 51.45 (11).

(6) (a) When an adult expectant mother is interviewed by an intake worker, the intake worker shall inform the adult expectant mother of her right to counsel.

(b) The intake worker shall review the need to hold the adult expectant mother in custody and shall make every effort to release the adult expectant mother from custody as provided in par. (c). The intake worker shall base his or her decision as to whether to release the adult expectant mother or to continue to hold the adult expectant mother in custody on the criteria specified in s. 48.205 (1m) and criteria established under s. 48.06 (1) or (2).

(c) The intake worker may release the adult expectant mother to an adult relative or friend of the adult expectant mother after counseling or warning the adult expectant mother as may be appropriate or, if an adult relative or friend is unavailable, unwilling or unable to accept the release of the adult expectant mother, the intake worker may release the adult expectant mother under

the adult expectant mother's own supervision after counseling or warning the adult expectant mother as may be appropriate.

(7) If an adult expectant mother is held in custody, the intake worker shall notify the adult expectant mother and the unborn child, through the unborn child's guardian ad litem, of the reasons for holding the adult expectant mother in custody, the time and place of the detention hearing required under s. 48.2 13, the nature and possible consequences of that hearing, and the right to present and cross-examine witnesses at the hearing.

History: 1997 a. 292.

48.205 Criteria for holding a child or expectant mother in physical custody. (1) A child may be held under s. 48.207 (1), 48.208 or 48.209 if the intake worker determines that there is probable cause to believe the child is within the jurisdiction of the court and:

(a) Probable cause exists to believe that if the child is not held he or she will cause injury to himself or herself or be subject to injury by others.

(am) Probable cause exists to believe that if the child is not held he or she will be subject to injury by others, based on a determination under par. (a) or a finding under s. 48.21 (4) that if another child in the home is not held that child will be subject to injury by others.

(b) Probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care and that services to ensure the child's safety and well-being are not available or would be inadequate.

(bm) Probable cause exists to believe that the child meets the criteria specified in par. (b), based on a determination under par. (b) or a finding under s. 48.21 (4) that another child in the home meets those criteria.

(c) Probable cause exists to believe that the child will run away or be taken away so as to be unavailable for proceedings of the court or its officers.

(d) Probable cause exists to believe that the child is an expectant mother, that if the child expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(1m) An adult expectant mother of an unborn child may be held under s. 48.207 (1m) if the intake worker determines that there is probable cause to believe that the adult expectant mother is within the jurisdiction of the court, to believe that if the adult expectant mother is not held, there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(2) The criteria for holding a child or the expectant mother of an unborn child in custody specified in this section shall govern the decision of all persons responsible for determining whether the action is appropriate.

History 1977 c. 354; 1979 c. 300; 1983 a. 399; 1989 a. 31, 107; 1993 a. 16, 377, 395; 1995 a. 27, 77, 275; 1991 a. 292; 1999 a. 83.

NOTE: 1993 Wis. Act 395, which creates subs. (1) (am) and (bm), contains extensive explanatory notes.

48.207 Places where a child or expectant mother may be held in nonsecure custody. (1) A child held in physical custody under s. 48.205 (1) may be held in any of the following places:

(a) The home of a parent or guardian, except that a child may not be held in the home of a parent or guardian if the parent or guardian has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(b) The home of a relative, except that a child may not be held in the home of a relative if the relative has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the person making the custody decision determines by clear and convincing evidence that the placement would be in the best interests of the child. The person making the custody decision shall consider the wishes of the child in making that determination.

(c) A licensed foster home or a licensed treatment foster home provided the placement does not violate the conditions of the license.

(cm) A licensed group home provided that the placement does not violate the conditions of the license.

(d) A nonsecure facility operated by a licensed child welfare agency.

(e) A licensed private or public shelter care facility.

(f) The home of a person not a relative, if the placement does not exceed 30 days, though the placement may be extended for an additional 30 days for cause by the court, and if the person has not had a foster home or treatment foster home license refused, revoked or suspended within the last 2 years.

(g) A hospital as defined in s. 50.33 (2) (a) and (c) or physician's office if the child is held under s. 48.20 (4) or (4m).

(h) A place listed in s. 51.15 (2) if the child is held under s. 48.20 (5).

(i) An approved public treatment facility for emergency treatment if the child is held under s. 48.20 (6).

(k) A facility under s. 48.58.

(1m) An adult expectant mother of an unborn child held in physical custody under s. 48.205 (1m) may be held in any of the following places:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A licensed community-based residential facility, as defined in s. 50.01 (1g), if the placement does not violate the conditions of the license.

(c) A hospital, as defined in s. 50.33 (2) (a) and (c), or a physician's office if the adult expectant mother is held under s. 48.203 (3).

(d) A place listed in s. 51.15 (2) if the adult expectant mother is held under s. 48.203 (4).

(e) An approved public treatment facility for emergency treatment if the adult expectant mother is held under s. 48.203 (5).

(2) (a) If a facility listed in sub. (1) (b) to (k) is used to hold a child in custody, or if supervisory services of a home detention program are provided to a child held under sub. (1) (a), the authorized rate of the facility for the care of the child or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed

by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the child.

(b) If a facility listed in sub. (1m) (b) to (e) is used to hold an expectant mother of an unborn child in custody, or if supervisory services of a home detention program are provided to an expectant mother held under sub. (1m) (a), the authorized rate of the facility for the care of the expectant mother or the authorized rate for those supervisory services shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. If no authorized rate has been established, a reasonable sum to be fixed by the court shall be paid by the county in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more for the supervision or care of the expectant mother.

(3) A child taken into custody under s. 48.981 may be held in a hospital, foster home, treatment foster home, relative's home or other appropriate medical or child welfare facility which is not used primarily for the detention of delinquent children.

History: 1977 c. 354, 355, 447; 1979 c. 300; 1983 a. 172; 1983 a. 189 s. 329(5); 1985 a. 332; 1993 a. 446; 1997 a. 27.292; 1999 a. 9.

48.208 Criteria for holding a child in a secure detention facility. A child may be held in a secure detention facility if the intake worker determines that one of the following conditions applies:

(3) The child consents in writing to being held in order to protect him or her from an imminent physical threat from another and such secure custody is ordered by the judge in a protective order.

(4) Probable cause exists to believe that the child, having been placed in nonsecure custody by an intake worker under s. 48.207 (1) or by the judge or a circuit court commissioner under s. 48.21 (4), has run away or committed a delinquent act and no other suitable alternative exists.

History: 1977 c. 354; 1979 c. 300; 1985 a. 176; 1993 a. 16, 377, 385, 491; 1995 a. 27, 77; 1997 a. 292; 2001 a. 61.

Courts may hold juveniles in contempt of court, but only under the criteria under s. 48.205 and this section. 70 Atty. Gen. 98.

48.209 Criteria for holding a child in a county jail. Subject to the provisions of s. 48.208, a county jail may be used as a secure detention facility if the criteria under either sub. (1) or (2) are met:

(1) There is no other secure detention facility approved by the department of corrections or a county which is available and:

(a) The jail meets the standards for secure detention facilities established by the department of corrections;

(b) The child is held in a room separated and removed from incarcerated adults;

(c) The child is not held in a cell designed for the administrative or disciplinary segregation of adults;

(d) Adequate supervision is provided; and

(e) The judge reviews the status of the child every 3 days.

(2) The child presents a substantial risk of physical harm to other persons in the secure detention facility, as evidenced by previous acts or attempts, which can only be avoided by transfer to the jail. The provisions of sub. (1) (a) to (e) shall be met. The child shall be given a hearing and transferred only upon order of the judge.

History: 1977 c. 354; 1989 a. 31; 1993 a. 98; 1995 a. 77.

Cross Reference: See also s. DOC 346.01, Wis. adm. code.

48.21 Hearing for child in custody. (1) HEARING: WHEN HELD. (a) If a child who has been taken into custody is not released under s. 48.20, a hearing to determine whether the child shall continue to be held in custody under the criteria of ss. 48.205 to 48.209 shall be conducted by the judge or a circuit court commissioner within 48 hours of the time the decision to hold the child was made, excluding Saturdays, Sundays, and legal holidays. By the

time of the hearing a petition under s. 48.25 shall be filed, except that no petition need be filed where a child is taken into custody under s. 48.19 (1) (b) or (d) 2. or 7. or where the child is a runaway from another state, in which case a written statement of the reasons for holding a child in custody shall be substituted if the petition is not filed. If no hearing has been held within 48 hours, excluding Saturdays, Sundays, and legal holidays, or if no petition or statement has been filed at the time of the hearing, the child shall be released except as provided in par. (b). A parent not present at the hearing shall be granted a rehearing upon request for good cause shown.

(b) If no petition has been filed by the time of the hearing, a child may be held in custody with approval of the judge or circuit court commissioner for an additional 72 hours from the time of the hearing, excluding Saturdays, Sundays and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe that the child is an imminent danger to himself or herself or to others, that probable cause exists to believe that the parent, guardian or legal custodian of the child or other responsible adult is neglecting, refusing, unable or unavailable to provide adequate supervision and care or, if the child is an expectant mother who was taken into custody under s. 48.19 (1) (cm) or (d) 8., that probable cause exists to believe that there is a substantial risk that if the child expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the child expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The extension may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in this paragraph, the judge or circuit court commissioner shall order the child's immediate release from custody.

(3) ~~PROCEEDINGS CONCERNING CHILDREN IN NEED OF PROTECTION OR SERVICES AND UNBORN CHILDREN IN NEED OF PROTECTION OR SERVICES AND THEIR CHILD EXPECTANT MOTHERS.~~ (ag) Proceedings concerning a child who comes within the jurisdiction of the court under s. 48.13 or an unborn child and a child expectant mother of the unborn child who come within the jurisdiction of the court under s. 48.133 shall be conducted according to this subsection.

(am) The parent, guardian, or legal custodian may waive his or her right to participate in the hearing under this section. After any waiver, a rehearing shall be granted at the request of the parent, guardian, legal custodian, or any other interested party for good cause shown.

(b) If present at the hearing, a copy of the petition shall be given to the parent, guardian or legal custodian, and to the child if he or she is 12 years of age or older, before the hearing begins. If the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., a copy of the petition shall also be given to the unborn child, through the unborn child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall be given to the child's parent, guardian and legal custodian, to the child if he or she is 12 years of age or older and, if the child is an expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., to the unborn child, through the unborn child's guardian ad litem, in accordance with s. 48.20 (8).

(d) Prior to the commencement of the hearing, the parent, guardian or legal custodian shall be informed by the court of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to confront and cross-examine witnesses and the right to present witnesses.

(e) If the parent, guardian or legal custodian or the child is not represented by counsel at the hearing and the child is continued in

custody as a result of the hearing, the parent, guardian, legal custodian or child may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold the child in custody be reheard. If the request is made, a rehearing shall take place as soon as possible. Any order to hold the child in custody shall be subject to rehearing for good cause, whether or not counsel was present.

(3m) PARENTAL NOTICE REQUIRED. If the child has been taken into custody because he or she committed an act which resulted in personal injury or damage to or loss of the property of another, the court, prior to the commencement of any hearing under this section, shall attempt to notify the child's parents of the possibility of disclosure of the identity of the child and the parents, of the child's police records and of the outcome of proceedings against the child for use in civil actions for damages against the child or the parents and of the parents' potential liability for acts of their children. If the court is unable to provide the notice before commencement of the hearing, it shall provide the child's parents with the specified information in writing as soon as possible after the hearing.

(4) CONTINUATION OF CUSTODY. If the judge or circuit court commissioner finds that the child should be continued in custody under the criteria of s. 48.205, he or she shall enter one of the following orders:

(a) Place the child with a parent, guardian, legal custodian or other responsible person and may impose reasonable restrictions on the child's travel, association with other persons or places of abode during the period of placement, including a condition requiring the child to return to other custody as requested; or subject the child to the supervision of an agency agreeing to supervise the child. Reasonable restrictions may be placed upon the conduct of the parent, guardian, legal custodian or other responsible person which may be necessary to ensure the safety of the child.

(b) Order the child held in an appropriate manner under s. 48.207, 48.208 or 48.209.

(5) ORDERS IN WRITING. (a) All orders to hold in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

(b) An order relating to a child held in custody outside of his or her home shall also include all of the following:

1. A finding that continued placement of the child in his or her home would be contrary to the welfare of the child. Unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, the order shall in addition include a finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns; and a finding as to whether the person who took the child into custody and the intake worker have made reasonable efforts to make it possible for the child to return safely home or, if for good cause shown sufficient information is not available for the judge or circuit court commissioner to make a finding as to whether those reasonable efforts were made to prevent the removal of the child from the home by no later than 5 days after the date of the order.

2. If the child is held in custody outside the home in a placement recommended by the intake worker, a statement that the court approves the placement recommended by the intake worker or, if the child is placed outside the home in a placement other than a placement recommended by the intake worker, a statement that

the court has given bona fide consideration to the recommendations made by the intake worker and all parties relating to the placement of the child.

3. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the custody order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

(c) The judge or circuit court commissioner shall make the findings specified in par. (b) 1. and 3. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the custody order. A custody order that merely references par. (b) 1. or 3. without documenting or referencing that specific information in the custody order or an amended custody order that retroactively corrects an earlier custody order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(d) 1. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge or circuit court commissioner shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(6) AMENDMENT OF ORDER. An order placing a child under sub. (4) (a) on conditions specified in this section may at any time be amended, with notice, so as to place the child in another form of custody for failure to conform to the conditions originally imposed. A child may be transferred to secure custody if he or she meets the criteria of s. 48.208.

(7) INFORMAL DISPOSITION. If the judge or circuit court commissioner determines that the best interests of the child and the public are served or, in the case of a child expectant mother who has been taken into custody under s. 48.19 (1) (cm) or (d) 8., that the best interests of the unborn child and the public are served, he or she may enter a consent decree under s. 48.32 or order the petition dismissed and refer the matter to the intake worker for informal disposition in accordance with s. 48.245.

History: 1977 c. 353, 447; 1979 c. 300: 1953 a. 399; 1985 a. 311; 1993 a. 98; 1995 a. 27, 77, 275; 1997 a. 35, 237, 292; 2001 a. 16, 61, 109.

The period under sub. (1) (a) runs from the time the intake worker decides to hold the child. *Curtis W. v. State*, 192 Wis. 2d 719, 531 N.W.2d 633 (Ct. App. 1995).

48.213 Hearing for adult expectant mother in custody.

(1) HEARING; WHEN HELD. (a) If an adult expectant mother of an unborn child who has been taken into custody is not released under s. 48.203, a hearing to determine whether the adult expectant

tant mother shall continue to be held in custody under the criteria of s. 48.205 (1m) shall be conducted by the judge or a circuit court commissioner within 48 hours after the time that the decision to hold the adult expectant mother was made, excluding Saturdays, Sundays and legal holidays. By the time of the hearing a petition under s. 48.25 shall be filed, except that no petition need be filed when an adult expectant mother is taken into custody under s. 48.193 (1) (b) or (d) 1. or 3., in which case a written statement of the reasons for holding the adult expectant mother in custody shall be substituted if the petition is not filed. If no hearing has been held within those 48 hours, excluding Saturdays, Sundays and legal holidays, or if no petition or statement has been filed at the time of the hearing, the adult expectant mother shall be released except as provided in par. (b).

(b) If no petition has been filed by the time of the hearing, an adult expectant mother of an unborn child may be held in custody with the approval of the judge or circuit court commissioner for an additional 72 hours after the time of the hearing, excluding Saturdays, Sundays and legal holidays, only if, as a result of the facts brought forth at the hearing, the judge or circuit court commissioner determines that probable cause exists to believe that there is a substantial risk that if the adult expectant mother is not held, the physical health of the unborn child, and of the child when born, will be seriously affected or endangered by the adult expectant mother's habitual lack of self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, and to believe that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The extension may be granted only once for any petition. In the event of failure to file a petition within the extension period provided for in this paragraph, the judge or circuit court commissioner shall order the adult expectant mother's immediate release from custody.

(2) PROCEEDINGS CONCERNING UNBORN CHILDREN IN NEED OF PROTECTION OR SERVICES AND THEIR ADULT EXPECTANT MOTHERS. (a) Proceedings concerning an unborn child and an adult expectant mother of the unborn child who come within the jurisdiction of the court under s. 48.133 shall be conducted according to this subsection.

(b) The adult expectant mother may waive the hearing under this section. After any waiver, a hearing shall be granted at the request of any interested party.

(c) A copy of the petition shall be given to the adult expectant mother, and to the unborn child, through the unborn child's guardian ad litem, before the hearing begins. Prior notice of the hearing shall be given to the adult expectant mother and unborn child in accordance with s. 48.203 (7).

(d) Prior to the commencement of the hearing, the adult expectant mother and the unborn child, through the unborn child's guardian ad litem, shall be informed by the court of the allegations that have been made or may be made, the nature and possible consequences of this hearing as compared to possible future hearings, the right to confront and cross-examine witnesses and the right to present witnesses.

(e) If the adult expectant mother is not represented by counsel at the hearing and the adult expectant mother is continued in custody as a result of the hearing, the adult expectant mother may request through counsel subsequently appointed or retained or through a guardian ad litem that the order to hold the adult expectant mother in custody be reheard. If the request is made, a rehearing shall take place as soon as possible. Any order to hold the adult expectant mother in custody shall be subject to rehearing for good cause, whether or not counsel was present.

(3) CONTINUATION OF CUSTODY. If the judge or circuit court commissioner finds that the adult expectant mother should be continued in custody under the criteria of s. 48.205 (1m), the judge or circuit court commissioner shall enter one of the following orders:

(a) Release the adult expectant mother and impose reasonable restrictions on the adult expectant mother's travel, association with other persons or places of abode during the period of the order, including a condition requiring the adult expectant mother to return to other custody as requested; or subject the adult expectant mother to the supervision of an agency agreeing to supervise the adult expectant mother. Reasonable restrictions may be placed upon the conduct of the adult expectant mother which may be necessary to ensure the safety of the unborn child and of the child when born.

(b) Order the adult expectant mother to be held in an appropriate manner under s. 48.207 (1m).

(4) ORDERS IN WRITING. All orders to hold an adult expectant mother of an unborn child in custody shall be in writing, listing the reasons and criteria forming the basis for the decision.

(5) AMENDMENT OF ORDER. An order under sub. (3) (a) imposing restrictions on an adult expectant mother of an unborn child may at any time be amended, with notice, so as to place the adult expectant mother in another form of custody for failure of the adult expectant mother to conform to the conditions originally imposed.

(6) INFORMAL DISPOSITION. If the judge or circuit court commissioner determines that the best interests of the unborn child and the public are served, the judge or circuit court commissioner may enter a consent decree under s. 48.32 or order the petition dismissed and refer the matter to the intake worker for informal disposition in accordance with s. 48.245.

History: 1997 a. 292; 2001 a. 61.

48.215 Mother-young child care program. Sections 48.19 to 48.21 do not apply to children participating in the mother-young child care program under s. 301.049.

History: 1991 a. 39.

48.227 Runaway homes. (1) Nothing contained in this section prohibits a home licensed under s. 48.48 or 48.75 from providing housing and services to a runaway child with the consent of the child and the consent of the child's parent, guardian or legal custodian, under the supervision of a county department, a child welfare agency or the department. When the parent, guardian or legal custodian and the child both consent to the provision of these services and the child has not been taken into custody, no hearing as described in this section is required.

(2) Any person who operates a home under sub. (1) and licensed under s. 48.48 or 48.75, when engaged in sheltering a runaway child without the consent of the child's parent, guardian or legal custodian, shall notify the intake worker of the presence of the child in the home within 12 hours. The intake worker shall notify the parent, guardian and legal custodian as soon as possible of the child's presence in that home. A hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian or legal custodian from conferring with the child or the person operating the home.

(3) For runaway children who have been taken into custody and then released, the judge may, with the agreement of the persons operating the homes, designate homes licensed under ss. 48.48 and 48.75 as places for the temporary care and housing of such children. If the parent, guardian or legal custodian refuses to consent, the person taking the child into custody or the intake worker may release the child to one of the homes designated under this section; however, a hearing shall be held under sub. (4). The child shall not be removed from the home except with the approval of the court under sub. (4). This subsection does not prohibit the parent, guardian, or legal custodian from conferring with the child or the person operating the home.

(4) (a) If the child's parent, guardian or legal custodian does not consent to the temporary care and housing of the child at the runaway home as provided under sub. (2) or (3), a hearing shall be held on the issue by the judge or a circuit court commissioner

within 24 hours of the time that the child entered the runaway home, excluding Saturdays, Sundays and legal holidays. The intake worker shall notify the child and the child's parent, guardian or legal custodian of the time, place and purpose of the hearing.

(b) If, in addition to jurisdiction under par. (c), the court has jurisdiction over the child under ss. 48.13 to 48.14, excluding s. 48.14 (8), or under ss. 938.12 to 938.14, a hearing may be held under s. 48.21 or 938.21.

(c) For the purposes of this section, the court has jurisdiction over a runaway child only to the extent that it may hold the hearings and make the orders provided in this section.

(d) At the hearing, the child, the child's parent, guardian or legal custodian and a representative of the runaway home may present evidence, cross-examine and confront witnesses and be represented by counsel or guardian ad litem.

(e) At the conclusion of the hearing, the court may order:

1. That the child be released to his or her parent, guardian or legal custodian; or

2. That, with the consent of the child and the runaway home, the child remain in the care of the runaway home for a period of not more than 20 days. Without further proceedings, the child shall be released whenever the child indicates, either by statement or conduct, that he or she wishes to leave the home or whenever the runaway home withdraws its consent. During this time period not to exceed 20 days ordered by the court, the child's parent, guardian or legal custodian may not remove the child from the home but may confer with the child or with the person operating the home. If, at the conclusion of the time period ordered by the court the child has not left the home, and no petition concerning the child has been filed under s. 48.13, 48.133, 938.12 or 938.13, the child shall be released from the home. If a petition concerning the child has been filed under s. 48.13, 48.133, 938.12 or 938.13, the child may be held in temporary physical custody under ss. 48.20 to 48.21 or 938.20 to 938.21.

(5) No person operating an approved or licensed home in compliance with this section is subject to civil or criminal liability by virtue of false imprisonment.

History: 1977 c. 354; 1979 c. 300; 1985 a. 176; 1995 a. 77; 1997 a. 292; 2001 a. 61.

48.23 Right to counsel. (1g) DEFINITION. In this section, "counsel" means an attorney acting as adversary counsel who shall advance and protect the legal rights of the party represented, and who may not act as guardian ad litem or court-appointed special advocate for any party in the same proceeding.

(1m) RIGHT OF CHILDREN TO LEGAL REPRESENTATION. Children subject to proceedings under this chapter shall be afforded legal representation as follows:

(a) Any child held in a secure detention facility shall be represented by counsel at all stages of the proceedings, but a child 15 years of age or older may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court accepts the waiver.

(b) 1. If a child is alleged to be in need of protection or services under s. 48.13, the child may be represented by counsel at the discretion of the court. Except as provided in subd. 2., a child 15 years of age or older may waive counsel if the court is satisfied such waiver is knowingly and voluntarily made and the court accepts the waiver.

2. If the petition is contested, the court may not place the child outside his or her home unless the child is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the court may not place the child outside his or her home unless the child is represented by counsel at the hearing at which the placement is made. For a child under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(c) Any child subject to the jurisdiction of the court under s. 48.14 (5) shall be represented by counsel. No waiver of counsel may be accepted by the court.

(cm) Any minor who is subject to the jurisdiction of the circuit court under s. 48.16 and who is required to appear in court shall be represented by counsel.

(2) RIGHT OF PARENTS TO COUNSEL. Whenever a child is the subject of a proceeding involving a contested adoption or the involuntary termination of parental rights, any parent under 18 years of age who appears before the court shall be represented by counsel; but no such parent may waive counsel. A minor parent petitioning for the voluntary termination of parental rights shall be represented by a guardian ad litem. If a proceeding involves a contested adoption or the involuntary termination of parental rights, any parent 18 years old or older who appears before the court shall be represented by counsel; but the parent may waive counsel provided the court is satisfied such waiver is knowingly and voluntarily made.

(2m) RIGHT OF EXPECTANT MOTHER TO COUNSEL. (a) When an unborn child is alleged to be in need of protection or services under s. 48.133, the expectant mother of the unborn child, if the expectant mother is a child, shall be represented by counsel and may not waive counsel.

(b) If a petition under s. 48.133 is contested, no expectant mother may be placed outside of her home unless the expectant mother is represented by counsel at the fact-finding hearing and subsequent proceedings. If the petition is not contested, the expectant mother may not be placed outside of her home unless the expectant mother is represented by counsel at the hearing at which the placement is made. An adult expectant mother, however, may waive counsel if the court is satisfied that the waiver is knowingly and voluntarily made and the court may place the adult expectant mother outside of her home even though the adult expectant mother was not represented by counsel.

(c) For an expectant mother under 12 years of age, the judge may appoint a guardian ad litem instead of counsel.

(3) POWER OF THE COURT TO APPOINT COUNSEL. Except in proceedings under s. 48.13, at any time, upon request or on its own motion, the court may appoint counsel for the child or any party, unless the child or the party has or wishes to retain counsel of his or her own choosing. The court may not appoint counsel for any party other than the child in a proceeding under s. 48.13.

(3m) GUARDIANS AD LITEM OR COUNSEL FOR ABUSED OR NEGLECTED CHILDREN. The court shall appoint counsel for any child alleged to be in need of protection or services under s. 48.13 (3), (3m), (10), (10m) and (11), except that if the child is less than 12 years of age the court may appoint a guardian ad litem instead of counsel. The guardian ad litem or counsel for the child may not act as counsel for any other party or any governmental or social agency involved in the proceeding and may not act as court-appointed special advocate for the child in the proceeding.

(4) PROVIDING COUNSEL. In any situation under this section in which a child has a right to be represented by counsel or is provided counsel at the discretion of the court and counsel is not knowingly and voluntarily waived, the court shall refer the child to the state public defender and counsel shall be appointed by the state public defender under s. 977.08 without a determination of indigency. If the referral is of a child who has filed a petition under s. 48.375 (7), the state public defender shall appoint counsel within 24 hours after that referral. Any counsel appointed in a petition filed under s. 48.375 (7) shall continue to represent the child in any appeal brought under s. 809.105 unless the child requests substitution of counsel or extenuating circumstances make it impossible for counsel to continue to represent the child. In any situation under sub. (2) or (2m) in which a parent 18 years of age or over or an adult expectant mother is entitled to representation by counsel; counsel is not knowingly and voluntarily

waived; and it appears that the parent or adult expectant mother is unable to afford counsel in full, or the parent or adult expectant mother so indicates; the court shall refer the parent or adult expectant mother to the authority for indigency determinations specified under s. 977.07 (1). In any other situation under this section in which a person has a right to be represented by counsel or is provided counsel at the discretion of the court, competent and independent counsel shall be provided and reimbursed in any manner suitable to the court regardless of the person's ability to pay, except that the court may not order a person who files a petition under s. 813.122 or 813.125 to reimburse counsel for the child who is named as the respondent in that petition.

(5) COUNSEL OF OWN CHOOSING. Regardless of any provision of this section, any party is entitled to retain counsel of his or her own choosing at his or her own expense in any proceeding under this chapter.

History: 1977 c. 354, 355, 447, 449; 1979 c. 300, 356; 1987 a. 27; 1987 a. 383; 1989 a. 31; Sup. Ct. Order, 151 Wis. 2d 111 (1989); 1989 a. 56, 107; 1991 a. 263; 1993 a. 377, 385, 395, 451, 491; 1995 a. 27, 77; 1997 a. 292; 1999 a. 9, 149; 2001 a. 103.

Cross-reference: See s. 48.275 (2), concerning contribution toward legal expenses by parent or guardian.

The court erred by failing to inform the parents of their right to a jury trial and to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 Wis. 2d 432; 342 N.W.2d 410 (1984).

Neither a temporary custody order nor a custodial interrogation were proceedings under sub. (1) (a). State v. Woods, 117 Wis. 2d 701, 345 N.W.2d 457 (1984).

When a party to a CHIPS action is represented by both adversary counsel and a GAL, adversary counsel must be allowed to zealously represent the client's expressed wishes, even if the GAL holds an opposing view. In Interest of T.L. 151 Wis. 2d 725, 445 N.W.2d 729 (Ct. App. 1989).

The right to be represented by counsel includes the right to effective counsel. In Interest of M.D.(S), 168 Wis. 2d 996, 485 N.W.2d 52 (1992).

The prohibition in sub. (3) against appointing counsel for a party other than the child is unconstitutional. Joni B. v. State, 202 Wis. 2d 1, 549 N.W.2d 411 (1996).

Sub. (4) does not say in cases other than those under s. 48.375 that appointment of counsel does not continue after an appeal has been filed. Section 809.85 provides otherwise. Juneau County Department of Human Services v. James B. 2000 WI App 86, 234 Wis. 2d 406, 610 N.W.2d 144.

Under *Joni B.*, juvenile courts have discretionary authority to appoint counsel for parents in CHIPS cases. When a parent requests counsel or when circumstances raise a reasonable concern that the parent will not be able to provide meaningful self-representation, the court must exercise that discretion. State v. Tammy L.D. 2000 WI App 200, 238 Wis. 2d 516, 617 N.W.2d 894.

48.235 Guardian ad litem. (1) APPOINTMENT. (a) The court may appoint a guardian ad litem in any appropriate matter under this chapter.

(b) The court shall appoint a guardian ad litem for a minor parent petitioning for the voluntary termination of parental rights.

(c) The court shall appoint a guardian ad litem for any child who is the subject of a proceeding to terminate parental rights: whether voluntary or involuntary, for a child who is the subject of a contested adoption proceeding and for a child who is the subject of a proceeding under s. 48.977 or 48.978.

(d) The circuit court may appoint a guardian ad litem for a minor in a proceeding under s. 48.375 (7) to aid the circuit court in determining under s. 48.375 (7) (c) whether or not the minor is mature and well-informed enough to make the abortion decision on her own and whether or not the performance or inducement of the abortion is in the minor's best interests.

(e) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any child alleged or found to be in need of protection or services, if the court has ordered, or if a request or recommendation has been made that the court order, the child to be placed out of his or her home under s. 48.345 or 48.357.

(f) The court shall appoint a guardian ad litem, or extend the appointment of a guardian ad litem previously appointed under par. (a), for any unborn child alleged or found to be in need of protection or services.

(2) QUALIFICATIONS. The guardian ad litem shall be an attorney admitted to practice in this state. No person who is an interested party in a proceeding, who appears as counsel or court-appointed special advocate in a proceeding on behalf of any party or who is a relative or representative of an interested party in a proceeding may be appointed guardian ad litem in that proceeding.

(3) DUTIES AND RESPONSIBILITIES. (a) The guardian ad litem shall be an advocate for the best interests of the person or unborn child for whom the appointment is made. The guardian ad litem shall function independently, in the same manner as an attorney for a party to the action, and shall consider, but shall not be bound by, the wishes of that person or the positions of others as to the best interests of that person or unborn child. If the guardian ad litem determines that the best interests of the person are substantially inconsistent with the wishes of that person, the guardian ad litem shall so inform the court and the court may appoint counsel to represent that person. The guardian ad litem has none of the rights or duties of a general guardian.

(b) In addition to any other duties and responsibilities required of a guardian ad litem, a guardian ad litem appointed for a child who is the subject of a proceeding under s. 48.13 or for an unborn child who is the subject of a proceeding under s. 48.133 shall do all of the following:

1. Unless granted leave by the court not to do so, personally, or through a trained designee, meet with the child or expectant mother of the unborn child, assess the appropriateness and safety of the environment of the child or unborn child and, if the child is old enough to communicate, interview the child and determine the child's goals and concerns regarding his or her placement.

2. Make clear and specific recommendations to the court concerning the best interest of the child or unborn child at every stage of the proceeding.

(4) MATTERS INVOLVING CHILD IN NEED OF PROTECTION OR SERVICES. (a) In any matter involving a child found to be in need of protection or services, the guardian ad litem may, if reappointed or if the appointment is continued under sub. (7), do any of the following:

1. Participate in permanency planning under ss. 48.38 and 48.43 (5).

2. Petition for a change in placement under s. 48.357.

3. Petition for termination of parental rights or any other matter specified under s. 48.14.

4. Petition for revision of dispositional orders under s. 48.363.

5. Petition for extension of dispositional orders under s. 48.365.

6. Petition for a temporary restraining order and injunction under s. 813.122 or 813.125.

7. Petition for relief from a judgment terminating parental rights under s. 48.46.

7g. Petition for the appointment of a guardian under s. 48.977 (2), the revision of a guardianship order under s. 48.977 (6) or the removal of a guardian under s. 48.977 (7).

7m. Bring an action or motion for the determination of the child's paternity under s. 767.45.

8. Perform any other duties consistent with this chapter.

(b) The court shall order the agency identified under s. 48.355 (2) (b) 1. as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

(4m) MATTERS INVOLVING UNBORN CHILD IN NEED OF PROTECTION OR SERVICES. (a) In any matter involving an unborn child found to be in need of protection or services: the guardian ad litem may, if reappointed or if the appointment is continued under sub. (7), do any of the following:

1. Participate in permanency planning under ss. 48.38 and 48.43 (5) after the child is born.

2. Petition for a change in placement under s. 48.357.

3. Petition for termination of parental rights or any other matter specified under s. 48.14 after the child is born.

3m. Petition for a commitment of the expectant mother of the unborn child under ch. 51 as specified in s. 48.14 (5).

4. Petition for revision of dispositional orders under s. 48.363.

5. Petition for extension of dispositional orders under s. 48.365.

6. Petition for a temporary restraining order and injunction under s. 813.122 or 813.125 after the child is born.

7. Petition for relief from a judgment terminating parental rights under s. 48.46 after the child is born.

7g. Petition for the appointment of a guardian under s. 48.977 (2), the revision of a guardianship order under s. 48.977 (6) or the removal of a guardian under s. 48.977 (7) after the child is born.

7m. Bring an action or motion for the determination of the child's paternity under s. 767.45 after the child is born.

8. Perform any other duties consistent with this chapter.

(b) The court shall order the agency identified under s. 48.355 (2)(b) 1. as primarily responsible for the provision of services to notify the guardian ad litem, if any, regarding actions to be taken under par. (a).

(5) MATTERS INVOLVING MINOR PARENT. The guardian ad litem for a minor parent whose parental rights are the subject of a voluntary termination proceeding shall interview the minor parent, investigate the reason for the termination of parental rights, assess the voluntariness of the consent and inform the minor parent of his or her rights and of the alternatives to, and the effect of, termination of parental rights.

(6) COMMUNICATION TO A JURY. Injury trials under this chapter, the guardian ad litem or the court may tell the jury that the guardian ad litem represents the interests of the person or unborn child for whom the guardian ad litem was appointed.

(7) TERMINATION AND EXTENSION OF APPOINTMENT. The appointment of a guardian ad litem under sub. (1) terminates upon the entry of the court's final order or upon the termination of any appeal in which the guardian ad litem participates. The guardian ad litem may appeal, may participate in an appeal or may do neither. If an appeal is taken by any party and the guardian ad litem chooses not to participate in that appeal, he or she shall file with the appellate court a statement of reasons for not participating. Irrespective of the guardian ad litem's decision not to participate in an appeal, the appellate court may order the guardian ad litem to participate in the appeal. At any time, the guardian ad litem, any party or the person for whom the appointment is made may request in writing or on the record that the court extend or terminate the appointment or reappointment. The court may extend that appointment, or reappoint a guardian ad litem appointed under this section, after the entry of the final order or after the termination of the appeal, but the court shall specifically state the scope of the responsibilities of the guardian ad litem during the period of that extension or reappointment.

(8) COMPENSATION. (a) A guardian ad litem appointed under this chapter shall be compensated at a rate that the court determines is reasonable, except that, if the court orders a county to pay the compensation of the guardian ad litem under par. (b) or (c) 2., the amount ordered may not exceed the compensation payable to a private attorney under s. 977.08 (4m) (b).

(b) Subject to par. (c), the court may order either or both of the parents of a child for whom a guardian ad litem is appointed under this chapter to pay all or any part of the compensation of the guardian ad litem. In addition, upon motion by the guardian ad litem, the court may order either or both of the parents of the child to pay the fee for an expert witness used by the guardian ad litem, if the guardian ad litem shows that the use of the expert is necessary to assist the guardian ad litem in performing his or her functions or duties under this chapter. If one or both parents are indigent or if the court determines that it would be unfair to a parent to require him or her to pay, the court may order the county of venue to pay the compensation and fees, in whole or in part. If the court orders the county of venue to pay because a parent is indigent, the court may also order either or both of the parents to reimburse the county, in whole or in part, for the payment.

(c) 1. In an uncontested termination of parental rights and adoption proceeding under s. 48.833, the court shall order the

agency that placed the child for adoption to pay the compensation of the child's guardian ad litem.

2. In an uncontested termination of parental rights and adoption proceeding under s. 48.835 or 48.837, the court shall order the proposed adoptive parents to pay the compensation of the child's guardian ad litem. If the proposed adoptive parents are indigent, the court may order the county of venue to pay the compensation, in whole or in part, and may order the proposed adoptive parents to reimburse the county, in whole or in part, for the payment.

(d) At any time before the final order in a proceeding in which a guardian ad litem is appointed for a child under this chapter, the court may order a parent, agency or proposed adoptive parent to place payments in an escrow account in an amount estimated to be sufficient to pay any compensation and fees payable under par. (b) or (c).

(e) If the court orders a parent or proposed adoptive parent to reimburse a county under par. (b) or (c) 2., the court may order a separate judgment for the amount of the reimbursement in favor of the county and against the parent or proposed adoptive parent who is responsible for the reimbursement.

(f) The court may enforce its orders under this subsection by means of its contempt powers.

History: Sup. Ct. Order, 151 Wis. 2d xxv (1989); 1991 a. 189, 263; 1993 a. 16, 315, 395; 1995 a. 27, 275; 1997 a. 237, 292, 334; 1999 a. 149.

Judicial Council Note, 1990: This section is designed to clarify when a guardian ad litem may or shall be appointed under this chapter; to define the duties of the guardian ad litem; and to require the adoptive parents to pay guardian ad litem fees in independent adoptions and the agency to do so in adoptions pursuant to s. 48.837.

Sub. (1) indicates when a guardian ad litem is to be appointed, leaving broad discretion to the court for such appointments.

Sub. (1) (b) and (c) set forth situations in which a guardian ad litem is required. While there are situations in which adversary counsel are an alternative to a guardian ad litem or more desirable and therefore required under s. 48.23, the committee concluded that the best interests of the child must be reflected by a guardian ad litem in the situations enumerated in these paragraphs.

Sub. (2) continues the qualifications currently in s. 48.235.

Sub. (3) addresses the responsibilities of the guardian ad litem. The guardian ad litem is to be an advocate for the best interests of the person for whom the appointment is made. The definition specifically rejects the view that the guardian ad litem should represent the wishes of the subject when they are different from interests. The guardian ad litem is required to inform the court when the wishes of the person differ from what the guardian ad litem believes to be his or her best interests. The definition also stresses the fact that the guardian ad litem should be independent and function in the same manner as the lawyer for a party. This includes the responsibility to serve appropriate documents, to advocate in accordance with the rules of evidence, to avoid ex parte communication, and the like.

Sub. (4) is designed to suggest the possible duties of a guardian ad litem after a CHIPS order. Continuation of the guardian ad litem is discretionary with the court in such situations, as provided in sub. (7). Sub. (4) specifically permits the continued involvement of the guardian ad litem in permanency planning and in the monitoring of the placement. It also makes it clear that, if it is in the best interests of the child, the guardian ad litem may seek the termination of the parental rights of the parents of the child and prosecute such an action. It is not intended to limit the responsibilities to those noted. The court may require the department to give appropriate notice to the guardian ad litem so the duties can be fulfilled.

Sub. (5) clarifies the responsibilities of the guardian ad litem for minor parents in termination cases, in the way of investigation and communication.

Sub. (6) permits the guardian ad litem or court to explain to the jury that he or she represents the interests of the person. This is to avoid unnecessary confusion.

Sub. (7) provides for the termination of appointment of the guardian ad litem upon entry of the court's final order unless the court extends or reappoints, indicating the scope of continuing responsibility. There are a large number of things a guardian ad litem might do during the period of extension or reappointment, including participate in permanency planning, seek extension or revision of dispositional orders, seek a change in placement and the like. The court might well identify general concerns to which the guardian ad litem should continue to be attentive, leaving to the guardian ad litem the methods to carry out the delegation of responsibility. This subsection also provides for the involvement of the guardian ad litem in appeals, leaving to the guardian ad litem broad discretion as to whether and how to participate. The requirement that the guardian ad litem notify the appellate court if the guardian ad litem chooses not to participate is to ensure that the guardian ad litem reflects on this important decision. The appellate court may require participation, notwithstanding the guardian ad litem's decision.

Sub. (8) retains the current law that, unless the court otherwise orders, the county pays the fees of the guardian ad litem in matters under this chapter, but it creates an exception for uncontested termination proceedings and uncontested adoptions, in which cases the adoptive parents or the agency are required to pay this fee unless the court finds they are unable to do so. The court is given the authority to require advance payment of the guardian ad litem fees into an escrow account. [Re Order effective Jan. 1, 1990]

When a party to a CHIPS action is represented by both adversary counsel and a GAL, adversary counsel must be allowed to zealously represent the client's expressed wishes, even if the GAL holds an opposing view. In Interest of T.L., 151 Wis. 2d 725, 445 N.W.2d 729 (Ct. App. 1989).

A court's power to appropriate compensation for court-appointed counsel is necessary for the effective operation of the judicial system. In ordering compensation

for attorneys a court should abide by the s. 977.08 (4m) rate when it can retain qualified and effective counsel at that rate, but should order compensation at the rate under SCR 81.01 or 81.02, or a higher rate when necessary, to secure effective counsel. *Friedrich v. Dane County Circuit Ct.* 192 Wis. 2d 1, 531 N.W.2d 32 (1995).

Except as provided in sub. (8), a guardian ad litem appointed under ch. 48 is to be paid by the county, regardless of the type of action or the parent's ability to pay. *Michael T. v. Briggs*, 204 Wis. 2d 401, 555 N.W.2d 651 (Ct. App. 1996).

48.236 Court-appointed special advocate. (1) DESIGNATION. In any proceeding under s. 48.13 in which the court finds that providing the services of a court-appointed special advocate would be in the best interests of the child, the court may request a court-appointed special advocate program to designate a person who meets the qualifications specified in sub. (2) as a court-appointed special advocate to undertake the activities specified in sub. (3). A court-appointed special advocate does not become a party to the proceeding and, as a nonparty, may not make motions or call or cross-examine witnesses. A designation under this subsection terminates when the jurisdiction of the court over the child under s. 48.13 terminates, unless the court discharges the court-appointed special advocate sooner.

(2) QUALIFICATIONS. A court-appointed special advocate shall be a volunteer or employee of a court-appointed special advocate program who has been selected and trained as provided in the memorandum of understanding entered into under s. 48.07 (5)(a). No person who is a party in a proceeding, who appears as counsel or guardian ad litem in a proceeding on behalf of any party or who is a relative or representative of a party in a proceeding may be designated as a court-appointed special advocate in that proceeding.

(3) ACTIVITIES. A court-appointed special advocate may be designated under sub. (1) to perform any of the following activities:

(a) Gather information and make observations about the child for whom the designation is made, the child's family and any other person residing in the same home as the child and provide that information and those observations to the court in the form of written reports or, if requested by the court, oral testimony.

(b) Maintain regular contact with the child for whom the designation is made; monitor the appropriateness and safety of the environment of the child, the extent to which the child and the child's family are complying with any consent decree or dispositional order of the court and with any permanency plan under s. 48.38, and the extent to which any agency that is required to provide services for the child and the child's family under a consent decree, dispositional order or permanency plan is providing those services; and, based on that regular contact and monitoring, provide information to the court in the form of written reports or, if requested by the court, oral testimony.

(c) Promote the best interests of the child.

(d) Undertake any other activities that are consistent with the memorandum of understanding entered into under s. 48.07 (5)(a).

(4) AUTHORITY. A court that requests a court-appointed special advocate program to designate a court-appointed special advocate to undertake the activities specified in sub. (3) may include in the order requesting that designation an order authorizing the court-appointed special advocate to do any of the following:

(a) Inspect any reports and records relating to the child who is the subject of the proceeding, the child's family and any other person residing in the same home as the child that are relevant to the subject matter of the proceeding, including records discoverable under s. 48.293, examination reports under s. 48.295 (2), law enforcement reports and records under ss. 48.396 (1) and 938.396 (1), court records under ss. 48.396 (2)(a) and 938.396 (2)(a), social welfare agency records under ss. 48.78 (2)(a) and 938.78 (2)(a), abuse and neglect reports and records under s. 48.981 (7)(a) 11r. and pupil records under s. 118.125 (2)(L). The order shall also require the custodian of any report or record specified in this paragraph to permit the court-appointed special advocate to inspect the report or record on presentation by the court-ap-

pointed special advocate of a copy of the order. A court-appointed special advocate that obtains access to a report or record described in this paragraph shall keep the information contained in the report or record confidential and may disclose that information only to the court. If a court-appointed special advocate discloses any information to the court under this paragraph, the court-appointed special advocate shall also disclose that information to all parties to the proceeding. If a court-appointed special advocate discloses information in violation of the confidentiality requirement specified in this paragraph, the court-appointed special advocate is liable to any person damaged as a result of that disclosure for such damages as may be proved and, notwithstanding s. 814.04 (1), for such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(b) Observe the child who is the subject of the proceeding and the child's living environment and, if the child is old enough to communicate, interview the child; interview the parent, guardian, legal custodian or other caregiver of the child who is the subject of the proceeding and observe that person's living environment; and interview any other person who might possess any information relating to the child and the child's family that is relevant to the subject of the proceeding. A court-appointed special advocate may observe or interview the child at any location without the permission of the child's parent, guardian, legal custodian or other caregiver if necessary to obtain any information that is relevant to the subject of the proceeding, except that a court-appointed special advocate may enter a child's home only with the permission of the child's parent, guardian, legal custodian or other caregiver or after obtaining a court order permitting the court-appointed special advocate to do so. A court-appointed special advocate who obtains any information under this paragraph shall keep the information confidential and may disclose that information only to the court. If a court-appointed special advocate discloses any information to the court under this paragraph, the court-appointed special advocate shall also disclose that information to all parties to the proceeding. If a court-appointed special advocate discloses information in violation of the confidentiality requirement specified in this paragraph, the court-appointed special advocate is liable to any person damaged as a result of that disclosure for such damages as may be proved and, notwithstanding s. 814.04 (1), for such costs and reasonable actual attorney fees as may be incurred by the person damaged.

(c) Exercise any other authority that is consistent with the memorandum of understanding entered into under s. 48.07 (5)(a).

(5) IMMUNITY FROM LIABILITY. A volunteer court-appointed special advocate designated under sub. (1) or an employee of a court-appointed special advocate program recognized under s. 48.07 (5) is immune from civil liability for any act or omission of the volunteer or employee occurring while acting within the scope of his or her activities and authority as a volunteer court-appointed special advocate or employee of a court-appointed special advocate program.

History: 1999 a. 149.

SUBCHAPTER V

PROCEDURE

48.24 Receipt of jurisdictional information; intake inquiry. (1) Information indicating that a child or an unborn child should be referred to the court as in need of protection or services shall be referred to the intake worker, who shall conduct an intake inquiry on behalf of the court to determine whether the available facts establish prima facie jurisdiction and to determine the best interests of the child or unborn child and of the public with regard to any action to be taken.

(1m) As part of the intake inquiry, the intake worker shall inform the child and the child's parent, guardian and legal custodian that they, or the adult expectant mother of an unborn child that

she, may request counseling from a person designated by the court to provide dispositional services under s. 48.069.

(2) (a) As part of the intake inquiry the intake worker may conduct multidisciplinary screens and intake conferences with notice to the child, parent, guardian and legal custodian or to the adult expectant mother of the unborn child. If sub. (2m) applies, the intake worker shall conduct a multidisciplinary screen under s. 48.547 if the child or expectant mother has not refused to participate under par. (b).

(b) No child or other person may be compelled to appear at any conference, participate in a multidisciplinary screen, produce any papers or visit any place by an intake worker.

(2m) (a) In counties that have an alcohol and other drug abuse program under s. 48.547, a multidisciplinary screen shall be conducted for:

2. Any child alleged to be in need of protection and services who has at least 2 prior adjudications for a violation of s. 125.07 (4) (a) or (b), 125.085 (3) (b) or 125.09 (2) or a local ordinance that strictly conforms to any of those sections.

4. Any child 12 years of age or older who requests and consents to a multidisciplinary screen.

5. Any child who consents to a multidisciplinary screen requested by his or her parents.

6. Any expectant mother 12 years of age or over who requests and consents to a multidisciplinary screen.

(b) The multidisciplinary screen may be conducted by an intake worker for any reason other than those specified in the criteria under par. (a).

(3) If the intake worker determines as a result of the intake inquiry that the child or unborn child should be referred to the court, the intake worker shall request that the district attorney, corporation counsel or other official specified in s. 48.09 file a petition.

(4) If the intake worker determines as a result of the intake inquiry that the case should be subject to an informal disposition, or should be closed, the intake worker shall so proceed. If a petition has been filed, informal disposition may not occur or a case may not be closed unless the petition is withdrawn by the district attorney, corporation counsel or other official specified in s. 48.09, or is dismissed by the judge.

(5) The intake worker shall request that a petition be filed, enter into an informal disposition or close the case within 40 days or sooner of receipt of referral information. If the case is closed or an informal disposition is entered into, the district attorney, corporation counsel or other official under s. 48.09 shall receive written notice of such action. If a law enforcement officer has made a recommendation concerning the child, or the unborn child and the expectant mother of the unborn child, the intake worker shall forward this recommendation to the district attorney, corporation counsel or other official under s. 48.09. With respect to petitioning a child or unborn child to be in need of protection or services, information received more than 40 days before filing the petition may be included to establish a condition or pattern which, together with information received within the 40-day period, provides a basis for conferring jurisdiction on the court. The judge shall dismiss with prejudice any such petition which is not referred or filed within the time limits specified within this subsection.

(6) The intake worker shall perform his or her responsibilities under this section under general written policies which the judge shall promulgate under s. 48.06 (1) or (2).

History: 1975c. 430; 1977c. 354; 1979c. 300, 331, 355, 359; 1987a. 339; 1989a. 31, 56; 1993a. 98; 1995a. 77, 275, 448; 1997a. 292.

Under the facts of the case, sub. (5) did not mandate dismissal although referral was not made within 40 days. In re J. L. W. 143 Wis. 2d 126, 420 N.W.2d 398 (Ct. App. 1988).

Under sub. (1), "information indicating that a child should be referred to the court" is that quantum of information that would allow a reasonable intake worker to evaluate the appropriate disposition of the matter. In Interest of J.W.T. 159 Wis. 2d 754, 465 N.W.2d 520 (Ct. App. 1990).

Sub. (5), when read in conjunction with sub. (3), requires that an intake worker request the district attorney to file a petition and does not require the intake worker

to make a recommendation that a petition be filed. Interest of Antonio M.C. 182 Wis. 2d 301, 313 N.W.2d 662 (Ct. App. 1994).

Under sub. (2) (b), a parent is not be required to cooperate, and a refusal to cooperate cannot be used as evidence supporting a CHIPS petition. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 240 Wis. 2d 516, 625 N.W.2d 307.

The receipt of phone message calling a county social service agency's attention to specific abuse combined with specific information about the abuse, which the agency labelled a referral, constituted the "receipt of referral information" under sub. (5) and triggered the 40-day period for requesting that a petition be filed. Sheboygan County Department of Health and Human Services v. Jodell G. 2001 WI App 18, 240 Wis. 2d 516, 625 N.W.2d 307.

48.243 Basic rights: duty of intake worker. (1) Before conferring with the parent, expectant mother or child during the intake inquiry, the intake worker shall personally inform parents, expectant mothers and children 12 years of age or older who are the focus of an inquiry regarding the need for protection or services that the referral may result in a petition to the court and of all of the following:

(a) What allegations could be in the petition.

(b) The nature and possible consequences of the proceedings.

(c) The right to remain silent and the fact that silence of any party may be relevant.

(d) The right to confront and cross-examine those appearing against them.

(e) The right to counsel under s. 48.23.

(f) The right to present and subpoena witnesses.

(g) The right to a jury trial.

(h) The right to have the allegations of the petition proved by clear and convincing evidence.

(3) If the child or expectant mother has not had a hearing under s. 48.21 or 48.213 and was not present at an intake conference under s. 48.24, the intake worker shall inform the child, parent, guardian and legal custodian, or expectant mother, as appropriate, of the basic rights provided under this section. The notice shall be given verbally, either in person or by telephone, and in writing. This notice shall be given so as to allow the child, parent, guardian, legal custodian or adult expectant mother sufficient time to prepare for the plea hearing. This subsection does not apply to cases of informal disposition under s. 48.245.

(4) This section does not apply if the child or expectant mother was present at a hearing under s. 48.21 or 48.213.

History: 1977c. 354; 1979c. 300; 1985a. 311; 1987a. 27; 1995a. 27, 77; 1997a. 35, 292.

A CHIPS proceeding is not a criminal proceeding within the meaning of the 5th amendment. *Miranda* warnings are not required to be given to the CHIPS petition subject, even though the individual is in custody and subject to interrogation, in order for the subject's statements to be admissible. State v. Thomas J.W. 213 Wis. 2d 264, 570 N.W.2d 586 (Ct. App. 1997)

48.245 Informal disposition. (1) The intake worker may enter into a written agreement with all parties which imposes informal disposition under this section if the intake worker has determined that neither the interests of the child or unborn child nor of the public require filing of a petition for circumstances relating to ss. 48.13 to 48.14. Informal disposition shall be available only if the facts persuade the intake worker that the jurisdiction of the court, if sought, would exist and upon consent of the child, parent, guardian and legal custodian; or upon consent of the child expectant mother, her parent, guardian and legal custodian and the unborn child, by the unborn child's guardian ad litem; or upon consent of the adult expectant mother and the unborn child, by the unborn child's guardian ad litem.

(2) (a) Informal disposition may provide for any one or more of the following:

1. That the child appear with a parent, guardian or legal custodian for counseling and advice or that the adult expectant mother appear for counseling and advice.

2. That the child and a parent, guardian and legal custodian abide by such obligations as will tend to ensure the rehabilitation, protection or care of the child or that the expectant mother abide by such obligations as will tend to ensure the protection or care of the unborn child and the rehabilitation of the expectant mother.

3. That the child or expectant mother submit to an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) and that is conducted by an approved treatment facility for an examination of the use of alcohol beverages, controlled substances or controlled substance analogs by the child or expectant mother and any medical, personal, family or social effects caused by its use, if the multidisciplinary screen conducted under s. 48.24 (2) shows that the child or expectant mother is at risk of having needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects.

4. That the child or expectant mother participate in an alcohol and other drug abuse outpatient treatment program or an education program relating to the abuse of alcohol beverages, controlled substances or controlled substance analogs, if an alcohol and other drug abuse assessment conducted under subd. 3. recommends outpatient treatment or education.

(b) Informal disposition may not include any form of residential placement and may not exceed 6 months, except as provided under sub. (2r).

(c) If the informal disposition provides for alcohol and other drug abuse outpatient treatment under par. (a) 4., the child and the child's parent, guardian or legal custodian, or the adult expectant mother, shall execute an informed consent form that indicates that they are, or that she is, voluntarily and knowingly entering into an informal disposition agreement for the provision of alcohol and other drug abuse outpatient treatment.

(2r) If an informal disposition is based on allegations that a child or an unborn child is in need of protection or services, the intake worker may, after giving written notice to the child and the child's parent, guardian and legal custodian and their counsel, if any, or after giving written notice to the child expectant mother, her parent, guardian and legal custodian and their counsel, if any, and the unborn child by the unborn child's guardian ad litem, or after giving written notice to the adult expectant mother, her counsel, if any, and the unborn child, by the unborn child's guardian ad litem, extend the informal disposition for up to an additional 6 months unless the child or the child's parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or the adult expectant mother or the unborn child by the unborn child's guardian ad litem, objects to the extension. If the child or the child's parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or the adult expectant mother or the unborn child by the unborn child's guardian ad litem, objects to the extension, the intake worker may recommend to the district attorney or corporation counsel that a petition be filed under s. 48.13 or 48.133. An extension under this subsection may be granted only once for any informal disposition. An extension under this subsection of an informal disposition relating to an unborn child who is alleged to be in need of protection or services may be granted after the child is born.

(3) The obligations imposed under an informal disposition and its effective date shall be set forth in writing. The child and a parent, guardian and legal custodian, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, shall receive a copy, as shall any agency providing services under the agreement.

(4) The intake worker shall inform the child and the child's parent, guardian and legal custodian, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, in writing of their right to terminate the informal disposition at any time or object at any time to the fact or terms of the informal disposition. If an objection arises the intake worker may alter the terms of the agreement or request the district attorney or corpora-

tion counsel to file a petition. If the informal disposition is terminated the intake worker may request the district attorney or corporation counsel to file a petition.

(5) Informal disposition shall be terminated upon the request of the child, parent, guardian or legal custodian, upon request of the child expectant mother, her parent, guardian or legal custodian or the unborn child by the unborn child's guardian ad litem, or upon the request of the adult expectant mother or the unborn child by the unborn child's guardian ad litem.

(5m) An informal disposition is terminated if the district attorney or corporation counsel files a petition within 20 days after receipt of notice of the informal disposition under s. 48.24 (5). In such case statements made to the intake worker during the intake inquiry are inadmissible.

(7) If at any time during the period of informal disposition the intake worker determines that the obligations imposed under it are not being met, the intake worker may cancel the informal disposition. Within 10 days after the cancellation of the informal disposition, the intake worker shall notify the district attorney, corporation counsel or other official under s. 48.09 of the cancellation and request that a petition be filed. The judge shall dismiss with prejudice any petition which is not filed within the time limit specified in this subsection.

(8) If the obligations imposed under the informal disposition are met, the intake worker shall so inform the child and a parent, guardian and legal custodian, the child expectant mother, her parent, guardian and legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, in writing, and no petition may be filed on the charges that brought about the informal disposition nor may the charges be the sole basis for a petition under ss. 48.13 to 48.14.

(9) The intake worker shall perform his or her responsibilities under this section under general written policies which the judge shall promulgate under s. 48.06 (1) or (2).

History: 1977 c. 353; 1979 c. 300, 331, 359; 1985 a. 311; 1987 a. 27, 285; 339, 403; 1991 a. 213, 253, 315; 1993 a. 98; 1995 a. 24, 77, 275, 448; 1997 a. 80, 292.

48.25 Petition: authorization to file. (1) A petition initiating proceedings under this chapter shall be signed by a person who has knowledge of the facts alleged or is informed of them and believes them to be true. The district attorney, corporation counsel or other appropriate official specified under s. 48.09 may file the petition if the proceeding is under s. 48.13 or 48.133. The counsel or guardian ad litem for a parent, relative, guardian or child may file a petition under s. 48.13 or 48.14. The counsel or guardian ad litem for an expectant mother or the guardian ad litem for an unborn child may file a petition under s. 48.133. The district attorney, corporation counsel or other appropriate person designated by the court may initiate proceedings under s. 48.14 in a manner specified by the court.

(2) If the proceeding is brought under s. 48.13 or 48.133, the district attorney, corporation counsel or other appropriate official shall file the petition, close the case, or refer the case back to intake within 20 days after the date that the intake worker's recommendation was filed. A referral back to intake may be made only when the district attorney, corporation counsel or other appropriate official decides not to file a petition or determines that further investigation is necessary. If the case is referred back to intake upon a decision not to file a petition, the intake worker shall close the case or enter into an informal disposition within 20 days. If the case is referred back to intake for further investigation, the appropriate agency or person shall complete the investigation within 20 days. If another referral is made to the district attorney, corporation counsel or other appropriate official, it shall be considered a new referral to which the time limits of this subsection shall apply. The time limits in this subsection may only be extended by a judge upon a showing of good cause under s. 48.315. If a petition is not filed within the time limitations set forth in this subsection and the court has not granted an extension, the petition shall be accompa-

nied by a statement of reasons for the delay. The court shall dismiss with prejudice a petition which was not timely filed unless the court finds at the plea hearing that good cause has been shown for failure to meet the time limitations.

(3) If the district attorney, corporation counsel or other appropriate official specified in s. 48.09 refuses to file a petition, any person may request the judge to order that the petition be filed and a hearing shall be held on the request. The judge may order the filing of the petition on his or her own motion. The matter may not be heard by the judge who orders the filing of a petition.

(6) If a proceeding is brought under s. 48.13, any party to or any governmental or social agency involved in the proceeding may petition the court to issue a temporary restraining order and injunction as provided in s. 813.122 or 813.125. The court exercising jurisdiction under this chapter shall follow the procedure under s. 813.122 or 813.125 except that the court may combine hearings authorized under s. 813.122 or 813.125 and this chapter, the petitioner for the temporary restraining order and injunction is not subject to the limitations under s. 813.122 (2) or 813.125 (2) and no fee is required regarding the filing of the petition under s. 813.122 or 813.125.

History: 1977 c. 354; 447: 1979 c. 300, 331, 355, 359; 1985 a. 234; 1993 a. 318; 1995 a. 77; 1997 a. 292.

"Good cause" under sub. (2) is determined by first considering the best interests of the child. Additional factors are whether: 1) the party seeking the enlargement of time has acted in good faith; 2) the opposing party is not prejudiced; and 3) the dilatory party took prompt action to remedy the situation. In *Interest of F. E. W.* 143 Wis. 2d 856, 422 N.W.2d 893 (Ct. App. 1988).

If the state fails to comply with the mandatory filing procedures pursuant to sub. (2), the petition must be dismissed with prejudice. In *Interest of C.A.K.* 154 Wis. 2d 612, 453 N.W.2d 897 (1990).

In a case referred by the district attorney of one county to another county, each district attorney had 20 days under sub. (2) to act following the respective referrals by the intake workers of each county. *State v. Everett.* 231 Wis. 2d 616, 605 N.W.2d 633 (Ct. App. 1999).

48.255 Petition; form and content. (1) A petition initiating proceedings under this chapter, other than a petition under s. 48.133, shall be entitled, "In the interest of (child's name), a person under the age of 18" and shall set forth with specificity:

(a) The name, birth date and address of the child

(b) The names and addresses of the child's parent, guardian, legal custodian or spouse, if any; or if no such person can be identified, the name and address of the nearest relative.

(c) Whether the child is in custody, and, if so, the place where the child is being held and the time he or she was taken into custody unless there is reasonable cause to believe that such disclosure would result in imminent danger to the child or physical custodian.

(cm) Whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(e) If the child is alleged to come within the provisions of s. 48.13 or 48.14, reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court and to provide reasonable notice of the conduct or circumstances to be considered by the court together with a statement that the child is in need of supervision, services, care or rehabilitation.

(f) If the child is being held in custody outside of his or her home, reliable and credible information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child into custody and the intake worker have made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, and to make it possible for the child to return safely home.

(1m) A petition initiating proceedings under s. 48.133 shall be entitled "In the interest of (J. Doe), an unborn child, and (expectant mother's name), the unborn child's expectant mother" and shall set forth with specificity:

(a) The estimated gestational age of the unborn child.

(b) The name, birth date and address of the expectant mother.

(bm) The names and addresses of the parent, guardian, legal custodian or spouse, if any, of the expectant mother, if the expectant mother is a child, the name and address of the spouse, if any, of the expectant mother, if the expectant mother is an adult, or, if no such person can be identified, the name and address of the nearest relative of the expectant mother.

(c) Whether the expectant mother is in custody and, if so, the place where the expectant mother is being held and the time when the expectant mother was taken into custody unless there is reasonable cause to believe that disclosure of that information would result in imminent danger to the unborn child, expectant mother or physical custodian.

(d) Whether the unborn child, when born, may be subject to the federal Indian Child Welfare Act, 25 USC 1911 to 1963.

(e) Reliable and credible information which forms the basis of the allegations necessary to invoke the jurisdiction of the court under s. 48.133 and to provide reasonable notice of the conduct or circumstances to be considered by the court, together with a statement that the unborn child is in need of protection or care and that the expectant mother is in need of supervision, services, care or rehabilitation.

(f) If the expectant mother is a child and the child expectant mother is being held in custody outside of her home, reliable and credible information showing that continued placement of the child expectant mother in her home would be contrary to the welfare of the child expectant mother and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, reliable and credible information showing that the person who took the child expectant mother into custody and the intake worker have made reasonable efforts to prevent the removal of the child expectant mother from the home, while assuring that the child expectant mother's health and safety are the paramount concerns, and to make it possible for the child expectant mother to return safely home.

(2) If any of the facts required under sub. (1) (a) to (cm) and (f) or (1m) (a) to (d) and (f) are not known or cannot be ascertained by the petitioner, the petition shall so state.

(3) If the information required under sub. (1) (e) or (1m) (e) is not stated, the petition shall be dismissed or amended under s. 48.263 (2).

(4) A copy of a petition under sub. (1) shall be given to the child if the child is 12 years of age or over and to the parents, guardian, legal custodian and physical custodian. A copy of a petition under sub. (1m) shall be given to the child expectant mother, if 12 years of age or over, her parents, guardian, legal custodian and physical custodian and the unborn child by the unborn child's guardian ad litem or to the adult expectant mother, the unborn child through the unborn child's guardian ad litem and the physical custodian of the expectant mother, if any. A copy of a petition under sub. (1) or (1m) shall also be given to the tribe or band with which the child is affiliated or with which the unborn child may be eligible for affiliation when born, if the child is an Indian child or the unborn child may be an Indian child when born.

(5) Subsections (1) to (4) do not apply to petitions to initiate a proceeding under s. 48.375 (7).

History: 1977 c. 354; 1991 a. 263; 1995 a. 27, 77, 352; 1997 a. 292; 2001 a. 109.

A CHIPS petition that alleged that a child was the victim of sexual abuse, but contained no information giving rise to an inference that there was something the court could do for the child that was not already being provided, was insufficient. *Interest of Courtney E.* 184 Wis. 3d 592, 516 N.W.2d 422 (1994).

48.257 Petition to initiate a procedure to waive parental consent prior to a minor's abortion. (1) A petition to initiate a proceeding under s. 48.375 (7) shall be entitled, "In the interest of 'Jane Doe', a person under the age of 18", and shall set forth with specificity:

(a) The name "Jane Doe" and the minor's date of birth.

(b) A statement that the minor is pregnant and the estimated gestational age of the fetus at the time that the petition is filed, and a statement that the minor is seeking an abortion.

(c) The name and address of the person who intends to perform or induce the abortion, if known. If that person is not known, the name and address of the clinic or other medical facility that intends to perform or induce the abortion, if known.

(d) A request for waiver of the parental consent requirement under s. 48.375 (4).

(e) A statement alleging that the minor is mature and well-informed enough to make her own decision on whether or not to have an abortion and facts sufficient to establish that the minor is mature enough and well-informed enough to make her own decision.

(f) A statement alleging that, if the circuit court does not find that the minor is mature enough and well-informed enough to make her own decision, the circuit court should find that having an abortion is in the minor's best interest and facts sufficient to establish that an abortion is in the minor's best interest.

(g) A statement acknowledging that the minor has been fully informed of the risks and consequences of abortion and the risks and consequences of carrying the pregnancy to term.

(h) If the minor is not represented by counsel, the place where and the manner in which the minor wishes to be notified of proceedings under s. 48.375 (7) until appointment of counsel under s. 48.375 (7) (a) 1. If the petition is filed by a member of the clergy on behalf of the minor, the place where and manner in which the member of the clergy wishes to be notified of proceedings under s. 48.375 (7).

(2) The director of state courts shall provide simplified forms for use in filing a petition under this section to the clerk of circuit court in each county.

(3) The minor who is seeking the abortion shall sign the name "Jane Doe" on the petition to initiate a proceeding under s. 48.375 (7). No other person may be required to sign the petition.

(4) The clerk of circuit court shall give a copy of the petition to the minor or to the member of the clergy who files a petition on behalf of the minor, if any.

(5) The minor, or the intake worker under s. 48.067 (7m), shall file the completed petition under this section with the clerk of circuit court.

(6) No filing fee may be charged for a petition under this section.

History: 1991 a. 263,315.

48.263 Amendment of petition. (1) Except as provided in s. 48.255 (3), no petition, process or other proceeding may be dismissed or reversed for any error or mistake if the case and the identity of the child or expectant mother named in the petition may be readily understood by the court: and the court may order an amendment curing the defects.

(2) With reasonable notification to the interested parties and prior to the taking of a plea under s. 48.30, the petition may be amended at the discretion of the court or person who filed the petition. After the taking of a plea, the petition may be amended provided any objecting party is allowed a continuance for a reasonable time.

History: 1977 c. 354; 1979 c. 300; 1995 a. 77; 1997 a. 292.

48.27 Notice; summons. (1) (a) After a petition has been filed relating to facts concerning a situation specified under s. 48.13 or a situation specified in s. 48.133 involving an expectant mother who is a child, unless the parties under sub. (3) voluntarily appear, the court may issue a summons requiring the person who has legal custody of the child to appear personally, and, if the court so orders, to bring the child before the court at a time and place stated.

(b) After a petition has been filed relating to facts concerning a situation specified under s. 48.133 involving an expectant

mother who is an adult, unless the adult expectant mother voluntarily appears, the court may issue a summons requiring the adult expectant mother to appear personally before the court at a time and place stated.

(2) Summons may be issued requiring the appearance of any other person whose presence, in the opinion of the court, is necessary.

(3) (a) 1. If the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child, the court shall also notify, under s. 48.273, the child, any parent, guardian and legal custodian of the child, any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child, the unborn child by the unborn child's guardian ad litem, if applicable, and any person specified in par. (b), (d) or (e), if applicable, of all hearings involving the child except hearings on motions for which notice need only be provided to the child and his or her counsel. When parents who are entitled to notice have the same place of residence, notice to one shall constitute notice to the other. The first notice to any interested party, foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) shall be written and may have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

1m. The court shall give a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 1. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under subd. 1. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

2. Failure to give notice under subd. 1. to a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the action or proceeding. If a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) is not given notice of a hearing under subd. 1., that person may request a rehearing on the matter during the pendency of an order resulting from the hearing. If the request is made, the court shall order a rehearing.

(b) 1. Except as provided in subd. 2., if the petition that was filed relates to facts concerning a situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother who is a child and if the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry as provided under s. 767.60 and if paternity has not been established, the court shall notify, under s. 48.273, all of the following persons:

a. A person who has filed a declaration of interest under s. 48.025.

h. A person alleged to the court to be the father of the child or who may, based on the statements of the mother or other information presented to the court, be the father of the child.

2. A court is not required to provide notice, under subd. 1., to any person who may be the father of a child conceived as a result of a sexual assault if a physician attests to his or her belief that there was a sexual assault of the child's mother that may have resulted in the child's conception.

(c) If the petition that was filed relates to facts concerning a situation under s. 48.133 involving an expectant mother who is an adult, the court shall notify, under s. 48.273, the unborn child by the unborn child's guardian ad litem, the expectant mother, the physical custodian of the expectant mother, if any, and any person

specified in par. (d), if applicable, of all hearings involving the unborn child and expectant mother except hearings on motions for which notice need only be provided to the expectant mother and her counsel and the unborn child through the unborn child's guardian ad litem. The first notice to any interested party shall be written and may have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

(d) If the petition that was filed relates to facts concerning a situation under s. 48.133 concerning an unborn child who, when born, will be an Indian child, the court shall notify, under s. 48.273, the tribe or band with which the unborn child will be affiliated when born and that tribe or band may, at the court's discretion, intervene in the proceeding before the unborn child is born.

(e) If the petition that was filed relates to facts concerning a situation under s. 48.13, the court shall also notify, under s. 48.273, the court-appointed special advocate for the child of all hearings involving the child. The first notice to a court-appointed special advocate shall be written and shall have a copy of the petition attached to it. Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time that notice was given and the person to whom he or she spoke.

(4) (a) A notice under sub. (3) (a) or (b) shall:

1. Contain the name of the child, and the nature, location, date and time of the hearing.

2. Advise the child of his or her right to legal counsel regardless of ability to pay.

(b) A notice under sub. (3) (c) shall:

1. Contain the name of the adult expectant mother, and the nature, location, date and time of the hearing.

2. Advise the adult expectant mother of her right to legal counsel regardless of ability to pay.

(5) Subject to sub. (3) (b), the court shall make every reasonable effort to identify and notify any person who has filed a declaration of interest under s. 48.025 and any person who has been adjudged to be the biological father of the child in a judicial proceeding unless the biological father's rights have been terminated.

(6) When a proceeding is initiated under s. 48.14, all interested parties shall receive notice and appropriate summons shall be issued in a manner specified by the court, consistent with applicable governing statutes. In addition, if the child who is the subject of the proceeding is in the care of a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the court shall give the foster parent, treatment foster parent or other physical custodian notice and an opportunity to be heard as provided in sub. (3) (a).

(8) When a petition is filed under s. 48.13 or when a petition involving an expectant mother who is a child is filed under s. 48.133, the court shall notify, in writing, the child's parents or guardian that they may be ordered to reimburse this state or the county for the costs of legal counsel provided for the child, as provided under s. 48.275 (2).

(9) Subsections (1) to (8) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the circuit court shall provide notice only to the minor, her counsel, if any, the member of the clergy who filed the petition on behalf of the minor, if any, and her guardian ad litem, if any. The notice shall contain the title and case number of the proceeding, and the nature, location, date and time of the hearing or other proceeding. Notice to the minor or to the member of the clergy, if any, shall be provided as requested under s. 48.257 (1) (h) and, after appointment of the minor's counsel, if any, by her counsel.

History: 1977 c. 354; 1979 c. 300, 331, 359; 1983 a. 27; Sup. Ct. Order. 141 Wis. 2d xiv (1987); 1987 a. 403; 1991 a. 263, 315; 1993 a. 98, 395; 1995 a. 27, 77, 275; 1997 a. 237, 392; 1999 a. 32, 139.

48.273 Service of summons or notice; expense.

(1) Service of summons or notice required by s. 48.27 may be made by mailing a copy thereof to the persons summoned or notified. If the persons fail to appear at the hearing or otherwise to acknowledge service, a continuance shall be granted, except where the court determines otherwise because the child is in secure custody, and service shall be made personally by delivering to the persons a copy of the summons or notice; except that if the court is satisfied that it is impracticable to serve the summons or notice personally, it may make an order providing for the service of the summons or notice by certified mail addressed to the last-known addresses of the persons. The court may refuse to grant a continuance when the child is being held in secure custody, but in such a case the court shall order that service of notice of the next hearing be made personally or by certified mail to the last-known address of the person who failed to appear at the hearing. Personal service shall be made at least 72 hours before the time of the hearing. Mail shall be sent at least 7 days before the time of the hearing, except where the petition is filed under s. 48.13 and the person to be notified lives outside the state, in which case the mail shall be sent at least 14 days before the time of the hearing.

(2) Service of summons or notice required by this chapter may be made by any suitable person under the direction of the court.


(3) The expenses of service of summons or notice or of the publication of summons or notice and the traveling expenses and fees as allowed in ch. 885 incurred by any person summoned or required to appear at the hearing of any case coming within the jurisdiction of the court under ss. 48.13 to 48.14, shall be a charge on the county when approved by the court.

(4) (a) Subsections (1) and (3) do not apply to any proceeding under s. 48.375 (7).

(b) Personal service is required for notice of all proceedings under s. 48.375 (7), except that, if the minor is not represented by counsel, notice to the minor shall be in the manner and at the place designated in the petition under s. 48.257 (1) until appointment of the minor's counsel, if any, under s. 48.375 (7) (a) 1. Notice shall be served immediately for any proceeding under s. 48.375 (7) unless the minor waives the immediate notice. If the minor waives the immediate notice, the notice shall be served at least 24 hours before the time of the hearing under s. 48.375 (7) (b) or any other proceeding under s. 48.375 (7). A minor may, in acknowledging receipt of service of the notice, sign the name "Jane Doe" in lieu of providing the minor's full signature.

(c) The expenses of service of notice and the travel expenses and fees allowed in ch. 885 incurred by any person who is required to appear, other than the minor who is named in the petition, in any proceeding under s. 48.375 (7) shall be paid by the county in which the circuit court that holds the proceeding is located.

History: 1977 c. 354; 1979 c. 300; 1991 a. 263; 1993 a. 98; 1995 a. 77.

Service under this section is applicable to members of  Indian tribe. In Interest of M.L.S. 157 Wis. 2d 36, 458 N.W.2d 541 (Ct. App. 1990).

48.275 Parents' contribution to cost of court and legal services.

(1) If the court finds a child to be in need of protection or services under s. 48.13 or an unborn child of an expectant mother who is a child to be in need of protection or services under s. 48.133, the court shall order the parent of the child to contribute toward the expense of post-adjudication services to the child expectant mother and the child when born the proportion of the total amount which the court finds the parent is able to pay. If the court finds an unborn child of an expectant mother who is an adult to be in need of protection or services under s. 48.133, the court shall order the adult expectant mother to contribute toward the expense of post-adjudication services to the adult expectant mother and the child when born the proportion of the total amount which the court finds the adult expectant mother is able to pay.

(2) (a) If this state or a county provides legal counsel to a child who is subject to a proceeding under s. 48.13 or to a child expectant mother who is subject to a proceeding under s. 48.133, the court shall order the child's parent to reimburse the state or county

in accordance with par. (b) or (c). If this state or a county provides legal counsel to an adult expectant mother who is subject to a proceeding under s. 48.133, the court shall order the adult expectant mother to reimburse the state or county in accordance with par. (b) or (c). The court may not order reimbursement if a parent is the complaining or petitioning party or if the court finds that the interests of the parent and the interests of the child in the proceeding are substantially and directly adverse and that reimbursement would be unfair to the parent. The court may not order reimbursement until the completion of the proceeding or until the state or county is no longer providing the child or expectant mother with legal counsel in the proceeding.

(b) If this state provides the child or adult expectant mother with legal counsel and the court orders reimbursement under par. (a), the child's parent or the adult expectant mother may request the state public defender to determine whether the parent or adult expectant mother is indigent as provided under s. 977.07 and to determine the amount of reimbursement. If the parent or adult expectant mother is found not to be indigent, the amount of reimbursement shall be the maximum amount established by the public defender board. If the parent or adult expectant mother is found to be indigent in part, the amount of reimbursement shall be the amount of partial payment determined in accordance with the rules of the public defender board under s. 977.02 (3).

(c) If the county provides the child or adult expectant mother with legal counsel and the court orders reimbursement under par. (a), the court shall either make a determination of indigency or shall appoint the county department to make the determination. If the court or the county department finds that the parent or adult expectant mother is not indigent or is indigent in part, the court shall establish the amount of reimbursement and shall order the parent or adult expectant mother to pay it.

(cg) The court shall, upon motion by a parent or expectant mother, hold a hearing to review any of the following:

1. An indigency determination made under par. (b) or (c).
2. The amount of reimbursement ordered.

3. The court's finding, under par. (a), that the interests of the parent and the child are not substantially and directly adverse and that ordering the payment of reimbursement would not be unfair to the parent.

(cr) Following a hearing under par. (cg), the court may affirm, rescind or modify the reimbursement order.

(d) 1. In a county having a population of less than 500,000, reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the county treasurer, who shall deposit 25% of the amount paid for state-provided counsel in the county treasury and transmit the remainder to the state treasurer. Payments transmitted to the state treasurer shall be deposited in the general fund and credited to the appropriation account under s. 20.550 (1) (L). The county treasurer shall deposit 100% of the amount paid for county-provided counsel in the county treasury.

2. In a county having a population of 500,000 or more, reimbursement payments shall be made to the clerk of courts of the county where the proceedings took place. Each payment shall be transmitted to the state treasurer, who shall deposit the amount paid in the general fund and credit 25% of the amount paid to the appropriation account under s. 20.435 (3) (gx) and the remainder to the appropriation account under s. 20.550 (1) (L).

(dm) Within 30 days after each calendar quarter, the clerk of court for each county shall report to the state public defender all of the following:

1. The total amount of reimbursement determined or ordered under par. (b) or (cr) for state-provided counsel during the previous calendar quarter.
2. The total amount collected under par. (d) for state-provided counsel during the previous calendar quarter.

(e) A person who fails to comply with an order under par. (b) or (c) may be proceeded against for contempt of court under ch. 785.

(3) This section does not apply to any proceedings under s. 48.375 (7).

History: 1977 c. 29, 354, 449; 1981 c. 20; 1983 a. 27; 1985 a. 29, 176; 1987 a. 27; 1991 a. 263; 1993 a. 98, 446; 1995 a. 27, 77; 1997 a. 27, 292.

Guardian ad litem fees are not reimbursable under sub. (2) (a). In Interest of G, 111 L.P. 119 Wis. 2d 339, 349 N.W.2d 743 (Ct. App. 1984).

48.28 Failure to obey summons; capias. If any person summoned fails without reasonable cause to appear, he or she may be proceeded against for contempt of court. In case the summons cannot be served or the parties served fail to obey the same, or in any case when it appears to the court that the service will be ineffectual a capias may be issued for the parent or guardian or for the child. Subchapter IV governs the taking and holding of a child in custody.

History: 1977 c. 354 s. 41; Stats. 1977 s. 48.28; 1979 c. 331, 359.

The issuance of a capias to secure the physical attendance of a juvenile prior to the service of the summons and petition on the juvenile was error but did not deny the court personal jurisdiction. Interest of Jermaine T.J. 181 Wis. 2d 82, 510 N.W.2d 735 (Ct. App. 1993).

48.29 Substitution of judge. (1) The child, the child's parent, guardian or legal custodian, the expectant mother or the unborn child by the unborn child's guardian ad litem, either before or during the plea hearing, may file a written request with the clerk of the court or other person acting as the clerk for a substitution of the judge assigned to the proceeding. Upon filing the written request, the filing party shall immediately mail or deliver a copy of the request to the judge named in the request. When any person has the right to request a substitution of judge, that person's counsel or guardian ad litem may file the request. Not more than one such written request may be filed in any one proceeding, nor may any single request name more than one judge. This section does not apply to proceedings under s. 48.21 or 48.213.

(1m) When the clerk receives a request for substitution, the clerk shall immediately contact the judge whose substitution has been requested for a determination of whether the request was made timely and in proper form. If the request is found to be timely and in proper form, the judge named in the request has no further jurisdiction and the clerk shall request the assignment of another judge under s. 75.1.03. If no determination is made within 7 days, the clerk shall refer the matter to the chief judge of the judicial administrative district for determination of whether the request was made timely and in proper form and reassignment as necessary.

(3) Subsections (1) and (1m) do not apply in any proceeding under s. 48.375 (7). For proceedings under s. 48.375 (7), the minor may select the judge whom she wishes to be assigned to the proceeding and that judge shall be assigned to the proceeding.

History: 1977 c. 354; 1979 c. 32 s. 92 (1); 1979 c. 300; 1987 a. 151; 1991 a. 263; 1993 a. 98; 1995 a. 77; 1997 a. 35, 292.

Sub. (1) permits more than one party to file a request for a substitution of judge in a TPR proceeding. Julie A.B. v. Sheboygan County, 2002 WI App 220, ___ Wis. 23, ___ N.W.2d ___.

48.293 Discovery. (1) Copies of all law enforcement officer reports, including the officer's memorandum and witnesses' statements, shall be made available upon request to counsel or guardian ad litem for any party and to the court-appointed special advocate for the child prior to a plea hearing. The reports shall be available through the representative of the public designated under s. 48.09. The identity of a confidential informant may be withheld pursuant to s. 905.10.

(2) All records relating to a child, or to an unborn child and the unborn child's expectant mother, which are relevant to the subject matter of a proceeding under this chapter shall be open to inspection by a guardian ad litem or counsel for any party and to inspection by the court-appointed special advocate for the child, upon demand and upon presentation of releases when necessary, at least

48 hours before the proceeding. Persons and unborn children, by their guardians ad litem, entitled to inspect the records may obtain copies of the records with the permission of the custodian of the records or with permission of the court. The court may instruct counsel, a guardian ad litem or a court-appointed special advocate not to disclose specified items in the materials to the child or the parent, or to the expectant mother, if the court reasonably believes that the disclosure would be harmful to the interests of the child or the unborn child.

(3) Upon request prior to the fact-finding hearing, counsel for the interests of the public shall disclose to the child, through his or her counsel or guardian ad litem, or to the unborn child, through the unborn child's guardian ad litem, the existence of any videotaped oral statement of a child under s. 908.08 which is within the possession, custody or control of the state and shall make reasonable arrangements for the requesting person to view the videotaped oral statement. If, subsequent to compliance with this subsection, the state obtains possession, custody or control of such a videotaped statement, counsel for the interests of the public shall promptly notify the requesting person of that fact and make reasonable arrangements for the requesting person to view the videotaped oral statement.

(4) In addition to the discovery procedures permitted under subs. (1) to (3), the discovery procedures permitted under ch. 804 shall apply in all proceedings under this chapter.

History: 1977 c. 354; 1985 a. 262; 1989 a. 121; 1993 a. 16; 1995 a. 77, 275; 1997 a. 292; 1999 a. 149.

Judicial Council Note, 1985: Sub. (3) makes videotaped oral statements of children in the possession, custody or control of the state discoverable upon demand by the child, child's counsel or guardian ad litem. These statements may be admissible under s. 908.08, stats. (85 Act 262)

Prior to a waiver hearing, a juvenile does not have broad discovery rights under this section. In Interest of J. M. J. 110 Wis. 2d 7, 327 N.W.2d 198 (Ct. App. 1982).

This section is the exclusive source of discovery rights of parties in ch. 48 actions. That ch. 804 discovery procedures are not available in ch. 48 actions does not deny due process. State v. Tammy F. 196 Wis. 2d 981, 539 N.W.2d 475 (Ct. App. 1995).

48.295 Physical, psychological, mental or developmental examination. (1) After the filing of a petition and upon a finding by the court that reasonable cause exists to warrant an examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4), the court may order any child coming within its jurisdiction to be examined as an outpatient by personnel in an approved treatment facility for alcohol and other drug abuse, by a physician, psychiatrist or licensed psychologist, or by another expert appointed by the court holding at least a master's degree in social work or another related field of child development, in order that the child's physical, psychological, alcohol or other drug dependency, mental or developmental condition may be considered. The court may also order an examination or an alcohol and other drug abuse assessment that conforms to the criteria specified under s. 48.547 (4) of a parent, guardian or legal custodian whose ability to care for a child is at issue before the court or of an expectant mother whose ability to control her use of alcohol beverages, controlled substances or controlled substance analogs is at issue before the court. The court shall hear any objections by the child, the child's parents, guardian or legal custodian to the request for such an examination or assessment before ordering the examination or assessment. The expenses of an examination, if approved by the court, shall be paid by the county of the court ordering the examination in a county having a population of less than 500,000 or by the department in a county having a population of 500,000 or more. The payment for an alcohol and other drug abuse assessment shall be in accordance with s. 48.361.

(1c) Reasonable cause is considered to exist to warrant an alcohol and other drug abuse assessment under sub. (1) if the multidisciplinary screen procedure conducted under s. 48.24 (2) indicates that the child or expectant mother is at risk of having needs and problems related to alcohol or other drug abuse.

(1g) If the court orders an alcohol or other drug abuse assessment under sub. (1), the approved treatment facility shall, within

14 days after the court order, report the results of the assessment to the court, except that, upon request by the approved treatment facility and if the child is not an expectant mother under s. 48.133 and is not held in secure or nonsecure custody, the court may extend the period for assessment for not more than 20 additional working days. The report shall include a recommendation as to whether the child or expectant mother is in need of treatment for abuse of alcohol beverages, controlled substances or controlled substance analogs or education relating to the use of alcohol beverages, controlled substances and controlled substance analogs and, if so, shall recommend a service plan and an appropriate treatment, from an approved treatment facility, or a court-approved education program.

(2) The examiner shall file a report of the examination with the court by the date specified in the order. The court shall cause copies to be transmitted to the district attorney or corporation counsel, to counsel or guardian ad litem for the child and to the court-appointed special advocate for the child. If applicable, the court shall also cause copies to be transmitted to counsel or guardian ad litem for the unborn child and the unborn child's expectant mother. The report shall describe the nature of the examination and identify the persons interviewed, the particular records reviewed and any tests administered to the child or expectant mother. The report shall also state in reasonable detail the facts and reasoning upon which the examiner's opinions are based.

(3) If the child, the child's parent or the expectant mother objects to a particular physician, psychiatrist, licensed psychologist or other expert as required under this section, the court shall appoint a different physician, psychiatrist, psychologist or other expert as required under this section.

(4) Motions or objections under this section may be heard under s. 807.13.

History: 1977 c. 354; 1979 c. 300; 1985 a. 321; Sup. Ct. Order, 141 Wis. 3d xiii (1987); 1987 a. 339; 1993 a. 474; 1995 a. 77, 225, 448; 1997 a. 37, 292; 1999 a. 149.

Judicial Council Note, 1988: Sub. (4) allows oral argument on motions or objections under this section to be heard by telephone. [Re Order effective Jan. 1, 1988]

48.297 Motions before trial. (1) Any motion which is capable of determination without trial of the general issue may be made before trial.

(2) Defenses and objections based on defects in the institution of proceedings, lack of probable cause on the face of the petition, insufficiency of the petition or invalidity in whole or in part of the statute on which the petition is founded shall be raised not later than 10 days after the plea hearing or be deemed waived. Other motions capable of determination without trial may be brought any time before trial.

(3) Motions to suppress evidence as having been illegally seized or statements as having been illegally obtained shall be made before fact-finding on the issues. The court may entertain the motion at the fact-finding hearing if it appears that a party is surprised by the attempt to introduce such evidence and that party waives jeopardy.

(4) Although the taking of a child or an expectant mother of an unborn child into custody is not an arrest, that taking into custody shall be considered an arrest for the purpose of deciding motions which require a decision about the propriety of taking into custody, including motions to suppress evidence as illegally seized, motions to suppress statements as illegally obtained and motions challenging the lawfulness of the taking into custody.

(5) If the child or the expectant mother of an unborn child is in custody and the court grants a motion to dismiss based on a defect in the petition or in the institution of the proceedings, the court may order the child or expectant mother to be continued in custody for not more than 48 hours pending the filing of a new petition.

(6) A motion required to be served on a child may be served on his or her attorney of record. A motion required to be served on an unborn child may be served on the unborn child's guardian ad litem.

(7) Oral argument permitted on motions under this section may be heard by telephone under s. 807.13 (1).

History: 1977 c. 354; 1979 c. 300, 331, 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1995 a. 77; 1997 a. 35, 292.

48.299 Procedures at hearings. (1) (a) The general public shall be excluded from hearings under this chapter and from hearings by courts exercising jurisdiction under s. 48.16 unless a public fact-finding hearing is demanded by a child through his or her counsel, by an expectant mother through her counsel or by an unborn child through the unborn child's guardian ad litem. However, the court shall refuse to grant the public hearing in a proceeding other than a proceeding under s. 48.375 (7), if a parent, guardian, expectant mother or unborn child through the unborn child's guardian ad litem objects.

(ag) In a proceeding other than a proceeding under s. 48.375 (7), if a public hearing is not held, only the parties and their counsel or guardian ad litem, the court-appointed special advocate for the child, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), witnesses and other persons requested by a party and approved by the court may be present, except that the court may exclude a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) from any portion of the hearing if that portion of the hearing deals with sensitive personal information of the child or the child's family or if the court determines that excluding the foster parent, treatment foster parent or other physical custodian would be in the best interests of the child. Except in a proceeding under s. 48.375 (7), any other person the court finds to have a proper interest in the case or in the work of the court, including a member of the bar, may be admitted by the court.

(ar) All hearings under s. 48.375 (7) shall be held in chambers, unless a public fact-finding hearing is demanded by the child through her counsel. In a proceeding under s. 48.375 (7), the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) may be present if requested by a party and approved by the court.

(b) Except as provided in ss. 48.375 (7) (c) and 48.396, any person who divulges any information which would identify the child, the expectant mother or the family involved in any proceeding under this chapter shall be subject to ch. 785.

(3) If the court finds that it is in the best interest of the child, and if the child's counsel or guardian ad litem consents, the child may be temporarily excluded by the court from a hearing on a petition alleging that the child is in need of protection or services. If the court finds that a child under 7 years of age is too young to comprehend the hearing, and that it is in the best interest of the child, the child may be excluded from the entire hearing.

(4) (a) Chapters 901 to 911 shall govern the presentation of evidence at the fact-finding hearings under ss. 48.31, 48.42, 48.977 (4) (d) and 48.978 (2) (e) and (3) (f) 2.

(b) Except as provided in s. 901.05, neither common law nor statutory rules of evidence are binding at a hearing for a child held in custody under s. 48.21, a hearing for an adult expectant mother held in custody under s. 48.213, a runaway home hearing under s. 48.227 (4), a dispositional hearing, or a hearing about changes in placement, revision of dispositional orders, extension of dispositional orders or termination of guardianship orders entered under s. 48.977 (4) (h) 2. or (6) or 48.978 (2) (j) 2. or (3) (g). At those hearings, the court shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony or evidence that is inadmissible under s. 901.05. Hearsay evidence may be admitted if it has demonstrable circumstantial guarantees of trustworthiness. The court shall give effect to the rules of privilege recognized by law. The court shall apply the basic principles of relevancy, materiality and probative value to proof of all questions of fact. Objections to evidentiary offers and offers of proof of evidence not admitted may be made and shall be noted in the record.

(5) On request of any party, unless good cause to the contrary is shown, any hearing under s. 48.209 (1) (e), 48.21 (1) or 48.213 (1) may be held on the record by telephone or live audiovisual means or testimony may be received by telephone or live audiovisual means as prescribed in s. 807.13 (2). The request and the showing of good cause for not conducting the hearing or admitting testimony by telephone or live audiovisual means may be made by telephone.

(6) If a man who has been given notice under s. 48.27 (3) (b) 1. appears at any hearing for which he received the notice, alleges that he is the father of the child and states that he wishes to establish the paternity of the child, all of the following apply:

(a) The court shall refer the matter to the state or to the attorney responsible for support enforcement under s. 59.53 (6) (a) for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child.

(b) The state or the attorney responsible for support enforcement who receives a referral under par. (a) shall perform the duties specified under s. 767.45 (5) (c) and (6r).

(c) The court having jurisdiction over actions affecting the family shall give priority under 767.475 (7m) to an action brought under s. 767.45 whenever the petition filed under s. 767.45 indicates that the matter was referred by the court under par. (a).

(d) The court may stay the proceedings under this chapter pending the outcome of the paternity proceedings under ss. 767.45 to 767.60 if the court determines that the paternity proceedings will not unduly delay the proceedings under this chapter and the determination of paternity is necessary to the court's disposition of the child if the child is found to be in need of protection or services.

(e) 1. In this paragraph, "genetic test" means a test that examines genetic markers present on blood cells, skin cells, tissue cells, bodily fluid cells or cells of another body material for the purpose of determining the statistical probability that a man who is alleged to be a child's father is the child's biological father.

2. The court shall, at the hearing, orally inform any man specified in sub. (6) (intro.) that he may be required to pay for any testing ordered by the court under this paragraph or under s. 885.23.

3. In addition to ordering testing as provided under s. 885.23, if the court determines that it would be in the best interests of the child, the court may order any man specified in sub. (6) (intro.) to submit to one or more genetic tests which shall be performed by an expert qualified as an examiner of genetic markers present on the cells and of the specific body material to be used for the tests, as appointed by the court. A report completed and certified by the court-appointed expert stating genetic test results and the statistical probability that the man alleged to be the child's father is the child's biological father based upon the genetic tests is admissible as evidence without expert testimony and may be entered into the record at any hearing. The court, upon request by a party, may order that independent tests be performed by other experts qualified as examiners of genetic markers present on the cells of the specific body materials to be used for the tests.

4. If the genetic tests show that an alleged father is not excluded and that the statistical probability that the alleged father is the child's biological father is 99.0% or higher, the court may determine that for purposes of a proceeding under this chapter, other than a proceeding under subch. VIII, the man is the child's biological parent.

5. A determination by the court under subd. 4. is not a judgment of paternity under ch. 767 or an adjudication of paternity under subch. VIII.

(7) If a man who has been given notice under s. 48.27 (3) (b) 1. appears at any hearing for which he received the notice but does not allege that he is the father of the child and state that he wishes to establish the paternity of the child or if no man to whom such notice was given appears at a hearing, the court may refer the matter to the state or to the attorney responsible for support enforce-

ment under s. 59.53 (6) (a) for a determination, under s. 767.45, of whether an action should be brought for the purpose of determining the paternity of the child.

(8) As part of the proceedings under this chapter, the court may order that a record be made of any testimony of the child's mother relating to the child's paternity. A record made under this subsection is admissible in a proceeding to determine the child's paternity under ss. 767.45 to 767.60.

History: 1979 c. 300; 1981 c. 353; 1985 a. 311; 1987 a. 27; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1991 a. 263.269; 1993 a. 16, 32, 98, 227, 228, 395; 1995 a. 77, 201, 275; 1997 a. 35.252.292.334; 1999 a. 32. 149.

Judicial Council Note: 1988: Sub. (5) allows a judicial review of the status of a child held in a county jail, or a continuation of custody hearing, to be held by telephone conference, or telephoned testimony to be admitted at such a hearing, on request of any party, unless good cause to the contrary is shown. [Re Order effective Jan. 1, 1988]

48.30 Plea hearing. (1) Except as provided in this subsection, the hearing to determine whether any party wishes to contest an allegation that the child or unborn child is in need of protection or services shall take place on a date which allows reasonable time for the parties to prepare but is within 30 days after the filing of a petition for a child or an expectant mother who is not being held in secure custody or within 10 days after the filing of a petition for a child who is being held in secure custody.

(2) At the commencement of the hearing under this section the child and the parent, guardian or legal custodian, the child expectant mother, her parent, guardian or legal custodian and the unborn child through the unborn child's guardian ad litem or the adult expectant mother and the unborn child through the unborn child's guardian ad litem, shall be advised of their rights as specified in s. 48.243 and shall be informed that a request for a jury trial or for a substitution of judge under s. 48.29 must be made before the end of the plea hearing or be waived. Nonpetitioning parties, including the child, shall be granted a continuance of the plea hearing if they wish to consult with an attorney on the request for a jury trial or substitution of a judge.

(3) If a petition alleges that a child is in need of protection or services under s. 48.13 or that an unborn child of a child expectant mother is in need of protection or services under s. 48.133, the nonpetitioning parties and the child, if he or she is 12 years of age or older or is otherwise competent to do so, shall state whether they desire to contest the petition. If a petition alleges that an unborn child of an adult expectant mother is in need of protection or services under s. 48.133, the adult expectant mother of the unborn child shall state whether she desires to contest the petition.

(6) (a) If a petition is not contested, the court shall set a date for the dispositional hearing which allows reasonable time for the parties to prepare but is no more than 10 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody. If all parties consent the court may proceed immediately with the dispositional hearing.

(b) If it appears to the court that disposition of the case may include placement of the child outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the designated agency under s. 48.33 (1) at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

(c) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the designated agency under s. 48.33 (1) and that designated agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the

child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(7) If the petition is contested, the court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days after the plea hearing for a child who is held in secure custody and no more than 30 days after the plea hearing for a child or an expectant mother who is not held in secure custody.

(8) Before accepting an admission or plea of no contest of the alleged facts in a petition, the court shall:

(a) Address the parties present including the child or expectant mother personally and determine that the plea or admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.

(b) Establish whether any promises or threats were made to elicit the plea or admission and alert unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.

(c) Make such inquiries as satisfactorily establishes that there is a factual basis for the plea or admission of the parent and child, of the parent and child expectant mother or of the adult expectant mother.

(9) If a circuit court commissioner conducts the plea hearing and accepts an admission of the alleged facts in a petition brought under s. 48.13 or 48.133, the judge shall review the admission at the beginning of the dispositional hearing by addressing the parties and making the inquiries set forth in sub. (8).

(10) The court may permit any party to participate in hearings under this section by telephone or live audiovisual means.

History: 1977 c. 354, 355, 437; 1979 c. 300, 331, 355, 359; 1985 a. 321, 332; 1987 a. 151; 1987 a. 403 s. 256; Sup. Ct. Order, 158 Wis. 2d xvii (1990); 1993 a. 163, 474, 481; 1995 a. 77, 225, 404, 417; 1997 a. 3.252.292; 1999 a. 103; 2001 a. 61.

The time limits under sub. (1) are mandatory; failure to comply results in the court's loss of competency and is properly remedied by dismissal without prejudice. In *Interest of Jason B.*, 176 Wis. 2d 400, 500 N.W.2d 384 (Ct. App. 1993).

A court's failure to inform a juvenile of the right to judicial substitution does not affect its competence and warrants reversal only if the juvenile suffers actual prejudice. *State v. Kywanda*, 200 Wis. 2d 26, 546 N.W.2d 440 (1996).

48.305 Hearing upon the involuntary removal of a child or expectant mother. Notwithstanding other time periods for hearings under this chapter, if a child is removed from the physical custody of the child's parent or guardian under s. 48.19 (1) (c) or (cm) or (d) 5. or 8. without the consent of the parent or guardian or if an adult expectant mother is taken into custody under s. 48.193 (1) (c) or (d) 2. without the consent of the expectant mother, the court shall schedule a plea hearing and fact-finding hearing within 30 days after a request from the parent or guardian from whom custody was removed or from the adult expectant mother who was taken into custody. The plea hearing and fact-finding hearing may be combined. This time period may be extended only with the consent of the requesting parent, guardian or expectant mother.

History: 1977 c. 354; 1979 c. 300; 1997 a. 292.

48.31 Fact-finding hearing. (1) In this section, "fact-finding hearing" means a hearing to determine if the allegations in a petition under s. 48.13 or 48.133 or a petition to terminate parental rights are proved by clear and convincing evidence.

(2) The hearing shall be to the court unless the child, the child's parent, guardian, or legal custodian, the unborn child by

the unborn child's guardian ad litem, or the expectant mother of the unborn child exercises the right to a jury trial by demanding a jury trial at any time before or during the plea hearing. If a jury trial is demanded in a proceeding under s. 48.13 or 48.133, the jury shall consist of 6 persons. If a jury trial is demanded in a proceeding under s. 48.42, the jury shall consist of 12 persons unless the parties agree to a lesser number. Chapters 756 and 805 shall govern the selection of jurors. If the hearing involves a child victim or witness, as defined in s. 950.02, the court may order the taking and allow the use of a videotaped deposition under s. 967.04 (7) to (10) and, with the district attorney, shall comply with s. 971.105. At the conclusion of the hearing, the court or jury shall make a determination of the facts, except that in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, the court shall make the determination under s. 48.13 (intro.) or 48.133 relating to whether the child or unborn child is in need of protection or services that can be ordered by the court. If the court finds that the child or unborn child is not within the jurisdiction of the court or, in a case alleging a child or an unborn child to be in need of protection or services under s. 48.13 or 48.133, that the child or unborn child is not in need of protection or services that can be ordered by the court or if the court or jury finds that the facts alleged in the petition have not been proved, the court shall dismiss the petition with prejudice.

(4) The court or jury shall make findings of fact and the court shall make conclusions of law relating to the allegations of a petition filed under s. 48.13, 48.133 or 48.42, except that the court shall make findings of fact relating to whether the child or unborn child is in need of protection or services which can be ordered by the court. In cases alleging a child to be in need of protection or services under s. 48.13 (11), the court may not find that the child is suffering emotional damage unless a licensed physician specializing in psychiatry or a licensed psychologist appointed by the court to examine the child has testified at the hearing that in his or her opinion the condition exists, and adequate opportunity for the cross-examination of the physician or psychologist has been afforded. The judge may use the written reports if the right to have testimony presented is voluntarily, knowingly and intelligently waived by the guardian ad litem or legal counsel for the child and the parent or guardian. In cases alleging a child to be in need of protection or services under s. 48.13 (11m) or an unborn child to be in need of protection or services under s. 48.133, the court may not find that the child or the expectant mother of the unborn child is in need of treatment and education for needs and problems related to the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects unless an assessment for alcohol and other drug abuse that conforms to the criteria specified under s. 48.547 (4) has been conducted by an approved treatment facility.

(7)(a) At the close of the fact-finding hearing, the court shall set a date for the dispositional hearing which allows a reasonable time for the parties to prepare but is no more than 10 days after the fact-finding hearing for a child in secure custody and no more than 30 days after the fact-finding hearing for a child or expectant mother who is not held in secure custody. If all parties consent, the court may immediately proceed with a dispositional hearing.

(b) If it appears to the court that disposition of the case may include placement of the child outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the designated agency under s. 48.33 (1j) at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

(c) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the designated agency under s. 48.33 (1) and that designated agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department at least 5 days before the scheduled date of the dispositional hearing or as otherwise ordered by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

History: 1977 c. 354, 447; 1979 c. 32 s. 92 (13); 1979 c. 300, 331, 355, 357, 359; 1983 a. 197; 1985 a. 262 s. 8; 1987 a. 339; 1993 a. 481; 1995 a. 77, 275, 404, 448; 1997 a. 3, 35, 292; 1999 a. 103; 2001 a. 105.

As a matter of judicial administration, the supreme court mandates procedures for withdrawal of a juvenile's jury demand. In Interest of N.E. 122 Wis. 2d 198, 361 N.W.2d 693 (1985).

A fact-finding hearing under sub. (1) was not closed until the court ruled on a motion to set aside the verdict. In Interest of C.M.L. 157 Wis. 2d 152, 458 N.W.2d 573 (Ct. App. 1990).

A child's need for protection or services should be determined as of the date the petition is filed. Children can be adjudicated in need of protection or services when divorced parents have joint custody, one parent committed acts proscribed by s. 48.13 (10), and at the time of the hearing the other can provide the necessary care for the children. State v. Gregory L.S. 2002 WI App 101, ___ Wis. 2d ___, 643 N.W.2d 890.

48.315 Delays, continuances and extensions. (1) The following time periods shall be excluded in computing time requirements within this chapter:

(a) Any period of delay resulting from other legal actions concerning the child or the unborn child and the unborn child's expectant mother, including an examination under s. 48.295 or a hearing related to the mental condition of the child, the child's parent, guardian or legal custodian or the expectant mother, prehearing motions, waiver motions and hearings on other matters.

(b) Any period of delay resulting from a continuance granted at the request of or with the consent of the child and his or her counsel or of the unborn child by the unborn child's guardian ad litem.

(c) Any period of delay caused by the disqualification of a judge.

(d) Any period of delay resulting from a continuance granted at the request of the representative of the public under s. 48.09 if the continuance is granted because of the unavailability of evidence material to the case when he or she has exercised due diligence to obtain the evidence and there are reasonable grounds to believe that the evidence will be available at the later date, or to allow him or her additional time to prepare the case and additional time is justified because of the exceptional circumstances of the case.

(e) Any period of delay resulting from the imposition of a consent decree.

(f) Any period of delay resulting from the absence or unavailability of the child or expectant mother.

(fm) Any period of delay resulting from the inability of the court to provide the child with notice of an extension hearing under s. 48.365 due to the child having run away or otherwise having made himself or herself unavailable to receive that notice.

(g) A reasonable period of delay when the child is joined in a hearing with another child as to whom the time for a hearing has not expired under this section if there is good cause for not hearing the cases separately.

(h) Any period of delay resulting from the need to appoint a qualified interpreter.

(1m) Subsection (l) (a), (d), (e) and (g) does not apply to proceedings under s. 48.375 (7).

(2) A continuance shall be granted by the court only upon a showing of good cause in open court or during a telephone conference under s. 807.13 on the record and only for so long as is necessary, taking into account the request or consent of the district attorney or the parties and the interest of the public in the prompt disposition of cases.

(2m) (a) No continuance or extension of a time limit specified in this chapter may be granted and no period of delay specified in sub. (1) may be excluded in computing a time requirement under this chapter if the continuance, extension, or exclusion would result in any of the following:

1. The court making an initial finding under s. 48.21 (5) (b) 1., 48.355 (2) (b) 6., or 48.357 (2v) (a) 1. that reasonable efforts have been made to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or an initial finding under s. 48.21 (5) (b) 3., 48.355 (2) (b) 6r., or 48.357 (2v) (a) 3. that those efforts were not required to be made because a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, more than 60 days after the date on which the child was removed from the home.

2. The court making an initial finding under s. 48.38 (5m) that the agency primarily responsible for providing services to the child has made reasonable efforts to achieve the goals of the child's permanency plan more than 12 months after the date on which the child was removed from the home or making any subsequent findings under s. 48.38 (5m) as to those reasonable efforts more than 12 months after the date of a previous finding as to those reasonable efforts.

(b) Failure to comply with any time limit specified in par. (a) does not deprive the court of personal or subject matter jurisdiction or of competency to exercise that jurisdiction. If a party does not comply with a time limit specified in par. (a), the court, while assuring the safety of the child, may dismiss the proceeding with or without prejudice, release the child from custody, or grant any other relief that the court considers appropriate.

History: 1977 c. 354; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1987 a. 403; 1991 a. 263; 1993 a. 98; 1997 a. 292; 2001 a. 16, 109.

A trial court's sua sponte adjournment of a fact-finding hearing beyond the 30-day limit due to a congested calendar constituted good cause under sub. (2) when the adjournment order was entered within the 30-day period. In *Matter of J.R.* 152 Wis. 2d 598, 449 N.W.2d 52 (Ct. App. 1989).

A court loses competence to exercise jurisdiction to extend an order when the hearing is not held within the 30-day period under s. 48.365 (6): the 30-day period may not be expanded by a continuance under s. 48.315 and the court's loss of competence cannot be waived. In *Interest of B.J.N.* 162 Wis. 2d 635, 469 N.W.2d 845 (1991).

The period under sub. (1) (c) includes the time required to assign the new judge, send any required notices, notify the parties, and arrange for time on the court's calendar; applicable time limits for plea hearings apply after the assignment of the new judge. In *Interest of Joshua M.W.* 179 Wis. 2d 335, 507 N.W.2d 141 (Ct. App. 1993).

Under sub. (2), "on the record does not require reporting by a court reporter. A clerk's minutes satisfy the requirement. *Waukesha County v. Darlene R.* 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996).

The benefits of a pretrial are universally recognized by bench and bar such that a court need not specify the factors supporting "good cause" for a continuance of the time limits under sub. (2). *Waukesha County v. Darlene R.* 201 Wis. 2d 633, 539 N.W.2d 489 (Ct. App. 1996).

Under sub. (1) (a), the time limits are tolled for an examination of a parent under s. 48.295. *Waukesha County v. Darlene R.* 201 Wis. 2d 633, 549 N.W.2d 489 (Ct. App. 1996).

The general time requirements of sub. (2) control all extensions of time under ch. 48. There are no provisions for waiver of time limits, and the only provisions for delays, continuances, and extensions are under this section. *State v. April O.* 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927.

48.317 Jeopardy. Jeopardy attaches:

(1) In a trial to the court, when a witness is sworn.

(2) In a jury trial, when the jury selection is completed and the jury sworn.

History: 1977 c. 354.

48.32 Consent decree. (1) (a) At any time after the filing of a petition for a proceeding relating to s. 48.13 or 48.133 and before the entry of judgment, the judge or a circuit court commissioner may suspend the proceedings and place the child or expectant

mother under supervision in the home or present placement of the child or expectant mother. The court may establish terms and conditions applicable to the child and the child's parent, guardian or legal custodian, to the child expectant mother and her parent, guardian or legal custodian or to the adult expectant mother, including the condition specified in sub. (1b). The order under this section shall be known as a consent decree and must be agreed to by the child if 12 years of age or older, the parent, guardian or legal custodian, and the person filing the petition under s. 48.25; by the child expectant mother, her parent, guardian or legal custodian, the unborn child by the unborn child's guardian ad litem and the person filing the petition under s. 48.25; or by the adult expectant mother, the unborn child by the unborn child's guardian ad litem and the person filing the petition under s. 48.25. The consent decree shall be reduced to writing and given to the parties.

(b) 1. If at the time the consent decree is entered into the child is placed outside the home under a voluntary agreement under s. 48.63 or is otherwise living outside the home without a court order and if the consent decree maintains the child in that placement or other living arrangement, the consent decree shall include a finding that placement of the child in his or her home would be contrary to the welfare of the child: a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and a finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

2. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the consent decree shall include a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the consent decree is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

3. The judge or circuit court commissioner shall make the findings specified in subds. 1. and 2. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the consent decree. A consent decree that merely references subd. 1. or 2. without documenting or referencing that specific information in the consent decree or an amended consent decree that retroactively corrects an earlier consent decree that does not comply with this subdivision is not sufficient to comply with this subdivision.

(c) 1. If the judge or circuit court commissioner finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge or circuit court commissioner shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(1b) The judge or a circuit court commissioner may, as a condition under sub. (1), request a court-appointed special advocate program to designate a court-appointed special advocate for the child to perform the activities specified in s. 48.236 (3) that are authorized in the memorandum of understanding under s. 48.07 (5) (a). A court-appointed special advocate designated under this subsection shall have the authority specified in s. 48.236 (4) that is authorized in the memorandum of understanding under s. 48.07 (5) (a).

(2) (a) A consent decree shall remain in effect up to 6 months unless the child, parent, guardian, legal custodian or expectant mother is discharged sooner by the judge or circuit court commissioner.

(c) Upon the motion of the court or the application of the child, parent, guardian, legal custodian, expectant mother, unborn child by the unborn child's guardian ad litem, intake worker or any agency supervising the child or expectant mother under the consent decree, the court may, after giving notice to the parties to the consent decree, their counsel or guardian ad litem and the court-appointed special advocate for the child, if any, extend the decree for up to an additional 6 months in the absence of objection to extension by the parties to the initial consent decree. If the child, parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem objects to the extension, the judge shall schedule a hearing and make a determination on the issue of extension. An extension under this paragraph of a consent decree relating to an unborn child who is alleged to be in need of protection or services may be granted after the child is born.

(3) If, prior to discharge by the court, or the expiration of the consent decree, the court finds that the child, parent, guardian, legal custodian or expectant mother has failed to fulfill the express terms and conditions of the consent decree or that the child or expectant mother objects to the continuation of the consent decree, the hearing under which the child or expectant mother was placed on supervision may be continued to conclusion as if the consent decree had never been entered.

(5) A court which, under this section, elicits or examines information or material about a child or an expectant mother which would be inadmissible in a hearing on the allegations of the petition may not, over objections of one of the parties, participate in any subsequent proceedings if any of the following applies:

(a) The court refuses to enter into a consent decree and the allegations in the petition remain to be decided in a hearing at which one of the parties denies the allegations forming the basis for a child or unborn child in need of protection or services petition.

(b) A consent decree is granted but the petition under s. 48.13 or 48.133 is subsequently reinstated.

(6) The judge or circuit court commissioner shall inform the child and the child's parent, guardian or legal custodian, or the adult expectant mother, in writing, of the right of the child or expectant mother to object to the continuation of the consent decree under sub. (3) and the fact that the hearing under which the child or expectant mother was placed on supervision may be con-

tinued to conclusion as if the consent decree had never been entered.

History: 1977 c. 354; 1985 a. 311; 1987 a. 27, 285, 339; 1991 a. 213, 253, 315; 1993 a. 98; 1995 a. 24, 77, 448; 1997 a. 292; 1999 a. 149; 2001 a. 61. 109.

A finding that a consent decree has been violated must be made before the consent decree expires. Filing a motion to vacate the consent decree prior to its expiration does not extend the term of the decree and does not prevent the automatic dismissal of the original petition upon the expiration of the decree. *Interest of Leif E.N. & Nora M.S.* 89 Wis. 2d 480, 526 N.W.2d 275 (Ct. App. 1994).

SUBCHAPTER VI

DISPOSITION

48.33 Court reports. (1) REPORT REQUIRED. Before the disposition of a child or unborn child adjudged to be in need of protection or services the court shall designate an agency, as defined in s. 48.38 (1) (a), to submit a report which shall contain all of the following:

(a) The social history of the child or of the expectant mother of the unborn child.

(b) A recommended plan of rehabilitation or treatment and care for the child or expectant mother which is based on the investigation conducted by the agency and any report resulting from an examination or assessment under s. 48.295, which employs the least restrictive means available to accomplish the objectives of the plan, and, in cases of child abuse or neglect or unborn child abuse, which also includes an assessment of risks to the physical safety and physical health of the child or unborn child and a description of a plan for controlling the risks.

(c) A description of the specific services or continuum of services which the agency is recommending that the court order for the child or family or for the expectant mother of the unborn child, the persons or agencies that would be primarily responsible for providing those services, the identity of the person or agency that would provide case management or coordination of services, if any, and, in the case of a child adjudged to be in need of protection or services, whether or not the child should receive an integrated service plan.

(d) A statement of the objectives of the plan, including any behavior changes desired of the child or expectant mother and the academic, social and vocational skills needed by the child or the expectant mother.

(e) A plan for the provision of educational services to the child, prepared after consultation with the staff of the school in which the child is enrolled or the last school in which the child was enrolled.

(f) If the agency is recommending that the court order the child's parent, guardian or legal custodian or the expectant mother to participate in mental health treatment, anger management, individual or family counseling or parent or prenatal development training and education, a statement as to the availability of those services and as to the availability of funding for those services.

(2) HOME PLACEMENT REPORTS. A report recommending that the child remain in his or her home or that the expectant mother remain in her home may be presented orally at the dispositional hearing if all parties consent. A report that is presented orally shall be transcribed and made a part of the court record.

(4) OTHER OUT-OF-HOME PLACEMENTS. A report recommending placement of an adult expectant mother outside of her home shall be in writing. A report recommending placement of a child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall be in writing and shall include all of the following:

(a) A permanency plan prepared under s. 48.38.

(b) A recommendation for an amount of child support to be paid by either or both of the child's parents or for referral to the

county child support agency under s. 59.53 (5) for the establishment of child support.

(c) Specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and specific information showing that the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(4m) SUPPORT RECOMMENDATIONS: INFORMATION TO PARENTS. In making a recommendation for an amount of child support under sub. (4), the agency shall consider the factors that the court considers under s. 46.10 (14) (c) for deviation from the percentage standard. Prior to the dispositional hearing under s. 48.335, the agency shall provide the child's parent with all of the following:

(a) A copy of its recommendation for child support.

(b) A written explanation of how the parent may request that the court modify the amount of child support under s. 46.10 (14) (c).

(c) A written explanation of how the parent may request a revision under s. 48.363 in the amount of child support ordered by the court under s. 48.355 (2) (b) 4.

(5) IDENTITY OF FOSTER PARENT OR TREATMENT FOSTER PARENT; CONFIDENTIALITY. If the report recommends placement in a foster home or a treatment foster home, and the name of the foster parent or treatment foster parent is not available at the time the report is filed, the agency shall provide the court and the child's parent or guardian with the name and address of the foster parent or treatment foster parent within 21 days after the dispositional order is entered, except that the court may order the information withheld from the child's parent or guardian if the court finds that disclosure would result in imminent danger to the child or to the foster parent or treatment foster parent. After notifying the child's parent or guardian, the court shall hold a hearing prior to ordering the information withheld.

History: 1977 c. 354; 1979 c. 300; 1983 a. 399; 1987 a. 37.339; 1989 a. 31, 41, 107; 1993 a. 377, 385, 446, 481; 1995 a. 27, 77, 201; 1997 a. 27.292; 2001 a. 59.109.

Cross Reference: See also s. HFS 58.04. Wis. adm. code.

48.335 Dispositional hearings. (1) The court shall conduct a hearing to determine the disposition of a case in which a child is adjudged to be in need of protection or services under s. 48.13 or an unborn child is adjudged to be in need of protection or services under s. 48.133.

(3) At hearings under this section, any party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations.

(3g) At hearings under this section, if the agency, as defined in s. 48.38 (1) (a), is recommending placement of the child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent, the agency shall present as evidence specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child, specific information showing that the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, and specific information showing that the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless

return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(3r) At hearings under this section, a parent of the child may present evidence relevant to the amount of child support to be paid by either or both parents.

(4) At hearings under this section, s. 48.357, 48.363 or 48.365, on the request of any party, unless good cause to the contrary is shown, the court may admit testimony on the record by telephone or live audiovisual means, if available, under s. 807.13 (2). The request and the showing of good cause may be made by telephone.

(5) At the conclusion of the hearing, the court shall make a dispositional order in accordance with s. 48.355.

History: 1977 c. 354; 1979 c. 300, 331, 359; Sup. Ct. Order, 141 Wis. 2d xiii (1987); 1993 a. 98.481; 1995 a. 77; 1997 a. 252.292; 2001 a. 109.

Judicial Council Note, 1988: Sub. (4) allows the court to admit testimony on the record by telephone or live television at hearings on disposition, revision and extension of orders, or change of placement, on request of any party, unless good cause is shown. [Sup. Ct. Order effective Jan. 1, 1988]

The petitioner bears the burden of proof by the greater weight of the credible evidence for purposes of dispositional and extension hearings. In Interest of T.M.S. 152 Wis. 2d 345, 448 N.W.2d 282 (Ct. App. 1989).

48.345 Disposition of child or unborn child of child expectant mother adjudged in need of protection or services.

If the judge finds that the child is in need of protection or services or that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any child not specifically found under chs. 46, 49, 51, 115 and 880 to be developmentally disabled, mentally ill or to have a disability specified in s. 115.76 (5) in facilities which exclusively treat those categories of children and the court may not place any child expectant mother of an unborn child in need of protection or services outside of the child expectant mother's home unless the court finds that the child expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. The dispositions under this section are as follows:

(1) Counsel the child or the parent, guardian or legal custodian.

(2) Place the child under supervision of an agency, the department, if the department approves, or a suitable adult, including a friend of the child, under conditions prescribed by the judge including reasonable rules for the child's conduct, designed for the physical, mental and moral well-being and behavior of the child and, if applicable, for the physical well-being of the child's unborn child.

(2m) Place the child in the child's home under the supervision of an agency or the department, if the department approves, and order the agency or department to provide specified services to the child and the child's family, which may include but are not limited to individual, family or, group counseling, homemaker or parent aide services, respite care: housing assistance, day care parent skills training or prenatal development training or education.

(2r) Place the child as provided in sub. (2) or (2m) and, in addition, request a court-appointed special advocate program to designate a court-appointed special advocate for the child to perform the activities specified in s. 48.236 (3) that are authorized in the memorandum of understanding under s. 48.07 (5) (a). A court-appointed special advocate designated under this subsection shall have the authority specified in s. 48.236 (4) that is authorized in the memorandum of understanding under s. 48.07 (5) (a).

(3) Designate one of the following as the placement for the child:

(a) The home of a parent or other relative of the child, except that the judge may not designate the home of a parent or other relative of the child as the child's placement if the parent or other rela-

tive has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

(b) The home of a person who is not required to be licensed if placement is for less than 30 days, except that the judge may not designate the home of a person who is not required to be licensed as the child's placement if the person has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, and the conviction has not been reversed, set aside or vacated, unless the judge determines by clear and convincing evidence that the placement would be in the best interests of the child. The judge shall consider the wishes of the child in making that determination.

(c) A foster home or treatment foster home licensed under s. 48.62 or a group home licensed under s. 48.625.

(cm) A group home described in s. 48.625 (1m) if the child is at least 12 years of age, is a custodial parent, as defined in s. 49.141 (1) (b), or an expectant mother, is receiving inadequate care, and is in need of a safe and structured living arrangement.

(d) A residential treatment center operated by a child welfare agency licensed under s. 48.60.

(4) If it is shown that the rehabilitation or the treatment and care of the child cannot be accomplished by means of voluntary consent of the parent or guardian, transfer legal custody to any of the following:

(a) A relative of the child.

(b) The county department in a county having a population of less than 500,000.

(bm) The department in a county having a population of 500,000 or more.

(c) A licensed child welfare agency.

(6) (a) If the child is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report under s. 48.33, the judge may order the child's parent to provide the special treatment or care. If the parent fails or is financially unable to provide the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care whether or not legal custody has been taken from the parents. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of special treatment or care under this paragraph may not include an order for the administration of psychotropic drugs.

(b) Payment for the special treatment or care that relates to alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 48.361.

(c) Payment for services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 48.362.

(6m) If the report prepared under s. 48.33 (1) recommends that the child is in need of an integrated service plan and if an integrated service program under s. 46.56 has been established in the county, the judge may order that an integrated service plan be developed and implemented.

(10) SUPERVISED INDEPENDENT LIVING. (a) The judge may order that a child, on attaining 17 years of age, be allowed to live independently, either alone or with friends, under such supervision as the judge deems appropriate.

(b) If the plan for independent living cannot be accomplished with the consent of the parent or guardian, the judge may transfer custody of the child as provided in sub. (4) (a) to (c).

(c) The judge may order independent living as a dispositional alternative only upon a showing that the child is of sufficient maturity and judgment to live independently and only upon proof of a reasonable plan for supervision by an appropriate person or agency.

(12) EDUCATION PROGRAM. (a) Except as provided in par. (d), the judge may order the child to attend any of the following:

1. A nonresidential educational program, including a program for children at risk under s. 118.153, provided by the school district in which the child resides.

2. Pursuant to a contractual agreement with the school district in which the child resides, a nonresidential educational program provided by a licensed child welfare agency.

3. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a private, nonprofit, nonsectarian agency that is located in the school district in which the child resides and that complies with 42 USC 2000d.

4. Pursuant to a contractual agreement with the school district in which the child resides, an educational program provided by a technical college district located in the school district in which the child resides.

(b) The judge shall order the school board to disclose the child's pupil records, as defined under s. 118.125 (1) (d), to the county department, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child, as necessary to determine the child's compliance with the order under par. (a).

(c) The judge shall order the county department, department, in a county having a population of 500,000 or more, or licensed child welfare agency responsible for supervising the child to disclose to the school board, technical college district board or private, nonprofit, nonsectarian agency which is providing an educational program under par. (a) 3. records or information about the child, as necessary to assure the provision of appropriate educational services under par. (a).

(d) This subsection does not apply to a child with a disability, as defined under s. 115.76 (5).

(13) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 (1) recommends that the child is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the child to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the approved treatment facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child as to whether the child is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 48.33 (1) recommends that the child is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, the court may order the child to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the education program and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the child or the child's parent if the child has not attained the age of 12, report to the agency primarily responsible for providing services to the child about the child's attendance at the program.

(c) Payment for the court ordered treatment or education under this subsection in counties that have an alcohol and other drug abuse program under s. 48.547 shall be in accordance with s. 48.361.

(14) (a) If, based on an evaluation under s. 48.295 and the report under s. 48.33, the judge finds that the child expectant mother of an unborn child in need of protection or services is in need of inpatient treatment for her habitual lack of self-control in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree, that inpatient treatment is appropriate for the child expectant mother's needs and that inpatient treatment is the least restrictive treatment consistent with the child expectant mother's needs, the judge may order the child expectant mother to enter an inpatient alcohol or other drug abuse treatment program at an inpatient facility, as defined in s. 51.01 (10). The inpatient facility shall, under the terms of a service agreement between the inpatient facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written and informed consent of the child expectant mother or the child expectant mother's parent if the child expectant mother has not attained the age of 12, report to the agency primarily responsible for providing services to the child expectant mother as to whether the child expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) Payment for any treatment ordered under par. (a) shall be in accordance with s. 48.361.

(15) If it appears that an unborn child in need of protection or services may be born during the period of the dispositional order, the judge may order that the child, when born, be provided with any services or care that may be ordered for a child in need of protection or services under this section.

History: 1971 c. 125; 1977 c. 354; 1979 c. 300; 1987 a. 285; 1989 a. 31, 107; 1993 a. 363, 377, 385, 491; 1995 a. 27; 1995 a. 77 ss. 235 to 237, 239, 241, 249, 250, 257 to 263; 1995 a. 225, 438; 1997 a. 27, 80, 164, 292; 1999 a. 9, 149; 2001 a. 59, 69.

48.347 Disposition of unborn child of adult expectant mother adjudged in need of protection or services. If the judge finds that the unborn child of an adult expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in this section under a care and treatment plan, except that the order may not place any adult expectant mother of an unborn child not specifically found under ch. 51, 55 or 880 to be developmentally disabled or mentally ill in a facility which exclusively treats those categories of individuals and the court may not place any adult expectant mother of an unborn child in need of protection or services outside of the adult expectant mother's home unless the court finds that the adult expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her. If the judge finds that the unborn child of a child expectant mother is in need of protection or services, the judge shall enter an order deciding one or more of the dispositions of the case as provided in s. 48.345 under a care and treatment plan. The dispositions under this section are as follows:

(1) COUNSELING. Counsel the adult expectant mother.

(2) SUPERVISION. Place the adult expectant mother under supervision of the county department, the department. if the department approves, or a suitable adult, including an adult relative or friend of the adult expectant mother, under conditions prescribed by the judge including reasonable rules for the adult expectant mother's conduct, designed for the physical well-being of the unborn child. An order under this paragraph may include an order to participate in mental health treatment, anger management, individual or family counseling or prenatal development training or education and to make a reasonable contribution, based on ability to pay, for the cost of those services.

(3) PLACEMENT. Designate one of the following as the placement for the adult expectant mother:

(a) The home of an adult relative or friend of the adult expectant mother.

(b) A community-based residential facility, as defined in s. 50.01 (1g).

(4) SPECIAL TREATMENT OR CARE. (a) If the adult expectant mother is in need of special treatment or care, as identified in an evaluation under s. 48.295 and the report under s. 48.33, the judge may order the adult expectant mother to obtain the special treatment or care. If the adult expectant mother fails or is financially unable to obtain the special treatment or care, the judge may order an appropriate agency to provide the special treatment or care. If a judge orders a county department under s. 51.42 or 51.437 to provide special treatment or care under this paragraph, the provision of that special treatment or care shall be subject to conditions specified in ch. 51. An order of special treatment or care under this paragraph may not include an order for the administration of psychotropic drugs.

(b) Payment for any special treatment or care that relates to alcohol and other drug abuse services ordered under par. (a) shall be in accordance with s. 48.361.

(c) Payment for any services provided under ch. 51 that are ordered under par. (a), other than alcohol and other drug abuse services, shall be in accordance with s. 48.362.

(5) ALCOHOL OR DRUG TREATMENT OR EDUCATION. (a) If the report prepared under s. 48.33 (1) recommends that the adult expectant mother is in need of treatment for the use or abuse of alcohol beverages, controlled substances or controlled substance analogs and its medical, personal, family or social effects, the court may order the adult expectant mother to enter an outpatient alcohol and other drug abuse treatment program at an approved treatment facility. The approved treatment facility shall, under the terms of a service agreement between the approved treatment facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother as to whether the adult expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) If the report prepared under s. 48.33 (1) recommends that the adult expectant mother is in need of education relating to the use of alcohol beverages, controlled substances or controlled substance analogs, the court may order the adult expectant mother to participate in an alcohol or other drug abuse education program approved by the court. The person or agency that provides the education program shall, under the terms of a service agreement between the education program and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother about the adult expectant mother's attendance at the program.

(c) Payment for any treatment or education ordered under this subsection in counties that have an alcohol and other drug abuse program under s. 48.547 shall be in accordance with s. 48.361.

(6) INPATIENT ALCOHOL OR DRUG TREATMENT. (a) If, based on an evaluation under s. 48.295 and the report under s. 48.33, the judge finds that the adult expectant mother is in need of inpatient treatment for her habitual lack of self-control in the use of alcohol, controlled substances or controlled substance analogs, exhibited to a severe degree, that inpatient treatment is appropriate for the adult expectant mother's needs and that inpatient treatment is the least restrictive treatment consistent with the adult expectant mother's needs, the judge may order the adult expectant mother to enter an inpatient alcohol or other drug abuse treatment pro-

gram at an inpatient facility, as defined in s. 51.01 (10). The inpatient facility shall, under the terms of a service agreement between the inpatient facility and the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more, or with the written and informed consent of the adult expectant mother, report to the agency primarily responsible for providing services to the adult expectant mother as to whether the adult expectant mother is cooperating with the treatment and whether the treatment appears to be effective.

(b) Payment for any treatment ordered under par. (a) shall be in accordance with s. 48.361.

(7) SERVICES FOR CHILD WHEN BORN. If it appears that the unborn child may be born during the period of the dispositional order, the judge may order that the child, when born, be provided any services or care that may be ordered for a child in need of protection or services under s. 48.345.

History: 1997 a. 292.

48.35 Effect of judgment and disposition. (1D) The judge shall enter a judgment setting forth his or her findings and disposition in the proceeding.

(b) The disposition of a child or an unborn child, and any record of evidence given in a hearing in court, shall not be admissible as evidence against the child or the expectant mother of the unborn child in any case or proceeding in any other court except for the following:

1. In sentencing proceedings after the child or expectant mother has been convicted of a felony or misdemeanor and then only for the purpose of a presentence investigation.

2. In a proceeding in any court assigned to exercise jurisdiction under this chapter and ch. 938.

3. In a court of civil or criminal jurisdiction while it is exercising jurisdiction over an action affecting the family and is considering the custody of a child.

(2) Except as specifically provided in sub. (1), this section does not preclude the court from disclosing information to qualified persons if the court considers the disclosure to be in the best interests of the child or unborn child or of the administration of justice.

History: 1971 c. 213 s. 5; 1973 c. 328; 1975 c. 39; 1977 c. 29; 1977 c. 354 ss. 59, 63; 1977 c. 447, 449; 1979 c. 32. 300, 331, 359; 1985 a. 321; 1987 a. 222; 1995 a. 27, 77; 1997 a. 205, 292.

48.355 Dispositional orders. (1D) TENT. In any order under s. 48.345 or 48.347 the judge shall decide on a placement and treatment finding based on evidence submitted to the judge. The disposition shall employ those means necessary to maintain and protect the well-being of the child or unborn child which are the least restrictive of the rights of the parent and child, of the rights of the parent and child expectant mother or of the rights of the adult expectant mother, and which assure the care: treatment or rehabilitation of the child and the family, of the child expectant mother, the unborn child and the family or of the adult expectant mother and the unborn child. consistent with the protection of the public. When appropriate. and. in cases of child abuse or neglect or unborn child abuse, when it is consistent with the best interest of the child or unborn child in terms of physical safety and physical health, the family unit shall be preserved and there shall be a policy of transferring custody of a child from the parent or of placing an expectant mother outside of her home only when there is no less drastic alternative. If there is no less drastic alternative for a child than transferring custody from the parent, the judge shall consider transferring custody to a relative whenever possible.

(2) CONTENT OF ORDER: COPY TO PARENT. (a) In addition to the order, the judge shall make written findings of fact and conclusions of law based on the evidence presented to the judge to support the disposition ordered, including findings as to the condition and need for special treatment or care of the child or expectant mother if an examination or assessment was conducted under s.

48.295. A finding may not include a finding that a child or an expectant mother is in need of psychotropic medications.

(b) The court order shall be in writing and shall contain:

1. The specific services or continuum of services to be provided to the child and family, to the child expectant mother and family or to the adult expectant mother, the identity of the agencies which are to be primarily responsible for the provision of the services ordered by the judge, the identity of the person or agency who will provide case management or coordination of services, if any, and, if custody of the child is to be transferred to effect the treatment plan, the identity of the legal custodian.

Im. A notice that the child's parent, guardian or legal custodian, the child, if 14 years of age or over, the expectant mother, if 14 years of age or over, or the unborn child by the unborn child's guardian ad litem may request an agency that is providing care or services for the child or expectant mother or that has legal custody of the child to disclose to, or make available for inspection by, the parent, guardian, legal custodian, child, expectant mother or unborn child by the unborn child's guardian ad litem the contents of any record kept or information received by the agency about the child or expectant mother as provided in s. 48.78 (2) (ag) and (aj).

2. If the child is placed outside the home, the name of the place or facility, including transitional placements, where the child shall be cared for or treated, except that if the placement is a foster home or treatment foster home and the name and address of the foster parent or treatment foster parent is not available at the time of the order, the name and address of the fosterparent or treatment foster parent shall be furnished to the court and the parent within 21 days of the order. If, after a hearing on the issue with due notice to the parent or guardian, the judge finds that disclosure of the identity of the foster parent or treatment foster parent would result in imminent danger to the child, the foster parent or the treatment foster parent, the judge may order the name and address of the prospective foster parents or treatment foster parents withheld from the parent or guardian.

2m. If the adult expectant mother is placed outside her home, the name of the place or facility, including transitional placements, where the expectant mother shall be treated.

3. The date of the expiration of the court's order.

4. If the child is placed outside the child's home, a designation of the amount of support, if any, to be paid by the child's parent, guardian or trustee, specifying that the support obligation begins on the date of the placement, or a referral to the county child support agency under s. 59.53 (5) for establishment of child support.

4m. If the child is placed outside the home and if the child's parent has not already provided a statement of income, assets, debts and living expenses to the county department or, in a county having a population of 500,000 or more, the department under s. 48.30 (6) (b) or (c) or 48.31 (7) (b) or (c), an order for the parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

5. For a child placed outside his or her home pursuant to an order under s. 48.345, a permanency plan under s. 48.38 if one has been prepared.

6. If the child is placed outside the home: a finding that continued placement of the child in his or her home would be contrary to the welfare of the child, a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts to

prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, unless the court finds that any of the circumstances specified in sub. (2d)(b) 1. to 5. applies, and a finding as to whether the county department, department, or agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the court finds that any of the circumstances specified in sub. (2d)(b) 1. to 5. applies. The court shall make the findings specified in this subdivision on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the court order. A court order that merely references this subdivision without documenting or referencing that specific information in the court order or an amended court order that retroactively corrects an earlier court order that does not comply with this subdivision is not sufficient to comply with this subdivision.

6m. If the child is placed outside the home in a placement recommended by the agency designated under s. 48.33 (1), a statement that the court approves the placement recommended by the agency or, if the child is placed outside the home in a placement other than a placement recommended by that agency, a statement that the court has given bona fide consideration to the recommendations made by the agency and all parties relating to the child's placement.

6r. If the court finds that any of the circumstances specified in sub. (2d)(b) 1. to 5. applies with respect to a parent, a determination that the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services under the court order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

7. A statement of the conditions with which the child or expectant mother is required to comply.

(c) If school attendance is a condition of an order under par. (b) 7., the order shall specify what constitutes a violation of the condition and shall direct the school board of the school district, or the governing body of the private school, in which the child is enrolled to notify the county department that is responsible for supervising the child or, in a county having a population of 500,000 or more, the department within 5 days after any violation of the condition by the child.

(d) The court shall provide a copy of a dispositional order relating to a child in need of protection or services to the child's parent, guardian or trustee, to the child through the child's counsel or guardian ad litem and to the child's court-appointed special advocate. The court shall provide a copy of a dispositional order relating to an unborn child in need of protection or services to the expectant mother, to the unborn child through the unborn child's guardian ad litem and, if the expectant mother is a child, to her parent, guardian or trustee.

(2b) CONCURRENT REASONABLE EFFORTS PERMITTED. A county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to a child under a court order may, at the same time as the county department, department, or agency is making the reasonable efforts required under sub. (2)(b) 6. to prevent the removal of the child from the home or to make it possible for the child to return safely to his or her home, work with the department, a county department under s. 48.57 (1)(e) or (hm), or a child welfare agency licensed under s. 48.61 (5) in making reasonable efforts to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement.

(2c) REASONABLE EFFORTS STANDARDS. (a) When a court makes a finding under sub. (2)(b) 6. as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services to the child under a court order has made reasonable efforts to prevent the removal of the child from his or her home,

while assuring that the child's health and safety are the paramount concerns, the court's consideration of reasonable efforts shall include, but not be limited to, whether:

1. A comprehensive assessment of the family's situation was completed, including a determination of the likelihood of protecting the child's health, safety and welfare effectively in the home.

2. Financial assistance, if applicable, was provided to the family.

3. Services were offered or provided to the family, if applicable, and whether any assistance was provided to the family to enable the family to utilize the services. Examples of the types of services that may have been offered include:

a. In-home support services, such as homemakers and parent aides.

b. In-home intensive treatment services.

c. Community support services, such as day care, parent skills training, housing assistance, employment training and emergency mental health services.

d. Specialized services for family members with special needs.

4. Monitoring of client progress and client participation in services was provided.

5. A consideration of alternative ways of addressing the family's needs was provided, if services did not exist or existing services were not available to the family.

(b) When a court makes a finding under sub. (2)(h) 6. as to whether the county department, department, in a county having a population of 500,000 or more, or agency primarily responsible for providing services to the child under a court order has made reasonable efforts to achieve the goal of the permanency plan, the court's consideration of reasonable efforts shall include the considerations listed under par. (a) 1. to 5. and whether visitation schedules between the child and his or her parents were implemented, unless visitation was denied or limited by the court.

(2d) REASONABLE EFFORTS NOT REQUIRED. (a) In this subsection:

1. "Aggravated circumstances" include abandonment in violation of s. 948.20 or in violation of the law of any other state or federal law if that violation would be a violation of s. 948.20 if committed in this state, torture, chronic abuse and sexual abuse.

2. "Sexual abuse" means a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 or a violation of the law of any other state or federal law if that violation would be a violation of s. 940.225, 944.30, 948.02, 948.025, 948.05, 948.055, 948.06, 948.09 or 948.10 if Committed in this state.

(b) Notwithstanding sub. (2)(b) 6., the court is not required to include in a dispositional order a finding as to whether the county department, the department, in a county having a population of 500,000 or more, or the agency primarily responsible for providing services under a court order has made reasonable efforts with respect to a parent of a child to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns, or a finding as to whether the county department, department, or agency has made reasonable efforts with respect to a parent of a child to achieve the permanency plan goal of returning the child safely to his or her home, if the court finds any of the following:

1. That the parent has subjected the child to aggravated circumstances, as evidenced by a final judgment of conviction.

2. That the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, as evidenced by a final judgment of conviction, and that the victim of that violation is a child of the parent.

3. That the parent has committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.

NOTE: Subd. 3. is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:

3. That the parent has committed a violation of s. 940.19 (2), (3), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (3), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, as evidenced by a final judgment of conviction, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent.

4. That the parental rights of the parent to another child have been involuntarily terminated, as evidenced by a final order of a court of competent jurisdiction terminating those parental rights.

5. That the parent has been found under s. 48.13 (2m) to have relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger, as evidenced by a final order of a court of competent jurisdiction making that finding.

(bm) The court shall make a finding specified in par. (b) 1. to 5. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which that finding is based in the dispositional order. A dispositional order that merely references par. (b) 1. to 5. without documenting or referencing that specific information in the dispositional order or an amended dispositional order that retroactively corrects an earlier dispositional order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) 1. If the court finds that any of the circumstances specified in par. (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2e) PERMANENCY PLANS; FILING: AMENDED ORDERS; COPIES.

(a) If a permanency plan has not been prepared at the time the dispositional order is entered, or if the court orders a disposition that is not consistent with the permanency plan, the agency responsible for preparing the plan shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within the time specified in s. 48.38 (3). A permanency plan filed under this paragraph shall be made a part of the dispositional order.

(b) Each time a child's placement is changed under s. 48.357 or a dispositional order is revised under s. 48.363 or extended under s. 48.365, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed under this paragraph shall be made a part of the court order.

(c) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the child's parent or guardian, to the child or the child's counsel or guardian ad litem, to the child's court-appointed special advocate and to the person representing the interests of the public.

(2m) TRANSITIONAL PLACEMENTS. The court order may include the name of transitional placements, but may not designate a specific time when transitions are to take place. The procedures of ss. 48.357 and 48.363 shall govern when such transitions take place. However, the court may place specific time limitations on interim arrangements made for the care of the child or for the treatment of the expectant mother pending the availability of the dispositional placement.

(3) PARENTAL VISITATION. (a) Except as provided in par. (b), if, after a hearing on the issue with due notice to the parent or guardian, the court finds that it would be in the best interest of the child, the court may set reasonable rules of parental visitation.

(b) 1. Except as provided in subd. 2., the court may not grant visitation under par. (a) to a parent of a child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

1m. Except as provided in subd. 2., if a parent who is granted visitation rights with a child under par. (a) is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated, the court shall issue an order prohibiting the parent from having visitation with the child on petition of the child, the guardian or legal custodian of the child, a person or agency bound by the dispositional order or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the parent.

2. Subdivisions 1. and 1m. do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(4) TERMINATION OF ORDERS. Except as provided under s. 48.368, an order under this section or s. 48.357 or 48.365 made before the child reaches 18 years of age that places or continues the placement of the child in his or her home shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner. Except as provided under s. 48.368, an order under this section or s. 48.357 or 48.365 made before the child reaches 18 years of age that places or continues the placement of the child in a foster home, treatment foster home, group home, or residential care center for children and youth or in the home of a relative other than a parent shall terminate when the child reaches 18 years of age, at the end of one year after its entry, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, when the child reaches 19 years of age, whichever is later, unless the judge specifies a shorter period of time or the judge terminates the order sooner. An order under this section or s. 48.357 or 48.365 relating to an unborn child in need of protection or services that is made before the unborn child is born shall terminate at the end of one year after its entry unless the judge specifies a shorter period of time or the judge terminates the order sooner.

(5) EFFECT OF COURT ORDER. Any party, person or agency who provides services for the child or the expectant mother under this section shall be bound by the court order.

(7) ORDERS APPLICABLE TO PARENTS, GUARDIANS, LEGAL CUSTODIANS, EXPECTANT MOTHERS AND OTHER ADULTS. In addition to any dispositional order entered under s. 48.345 or 48.347, the court may enter an order applicable to the parent, guardian or legal custodian of a child, to a family member of an adult expectant mother or to another adult as provided under s. 48.45.

History: 1977 c. 354; 1979 c. 295, 300, 359; 1983 a. 27, 102, 399, 538; 1985 a. 29; 1987 a. 27, 339, 383; 1989 a. 31, 41, 86, 107, 121, 359; 1991 a. 39; 1993 a. 98, 334, 377, 385, 395, 446, 481, 491; 1995 a. 27, 77, 201, 225, 275; 1997 a. 27, 205, 237, 292; 1999 a. 9, 103, 149, 186; 2001 a. 2, 16, 109

Mandatory time limits affect a trial court's competency to act, but an objection must be raised before the trial court to avoid waiver. In *Interest of L.M.C.* 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).

48.356 Duty of court to warn. (1) Whenever the court orders a child to be placed outside his or her home, orders an expectant mother of an unborn child to be placed outside of her home or denies a parent visitation because the child or unborn child has been adjudged to be in need of protection or services under s. 48.345, 48.347, 48.357, 48.363 or 48.365, the court shall orally inform the parent or parents who appear in court or the expectant mother who appears in court of any grounds for termination of parental rights under s. 48.415 which may be applicable and of the conditions necessary for the child or expectant mother to be returned to the home or for the parent to be granted visitation.

(2) In addition to the notice required under sub. (1), any written order which places a child or an expectant mother outside the home or denies visitation under sub. (1) shall notify the parent or parents or expectant mother of the information specified under sub. (1).

History: 1979 c. 330; 1983 a. 399; 1989 a. 86; 1991 a. 39; 1995 a. 275; 1997 a. 292.

Substantial compliance is not adequate to meet the sub. (2) notice provision: oral, rather than written, notice is insufficient. In *re D.F.* 147 Wis. 2d 486, 433 N.W.2d 609 (Ct. App. 1988).

Dismissal of termination proceedings because only 2 of 6 dispositional orders contained statutory warnings was inappropriate. The warning is only required on one order. In *Interest of K.K.* 162 Wis. 2d 431, 469 N.W.2d 881 (Ct. App. 1991).

To comply with sub. (2), the written order must contain the same information as the oral notice under sub. (1); that the notice contained more does not mean sub. (2) was violated. In *Interest of Jamie L.* 172 Wis. 2d 218, 493 N.W.2d 56 (1992).

When the grounds for termination of parental rights is under s. 38.415 (8) for murdering the other parent, no notice under sub. (1) of the conditions necessary for the return of the child is necessary as the grounds for termination, the murder, cannot be remedied. *Winnebago County DSS v. Darrell A.* 194 Wis. 2d 628, 534 N.W.2d 907 (Ct. App. 1995).

It was a denial of due process to terminate parental rights on grounds substantially different from those that the parent was warned of under s. 48.356. *State v. Patricia A.P.* 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995).

The written warning under sub. (2) applies only to orders removing children from placement with their parents or denying parental visitation. Temporary physical custody orders or extensions of those orders may not lead to a loss of parental rights and do not require the written warning. *Marquette County v. Tammy C.* 219 Wis. 2d 206, 579 N.W.2d 635 (1998).

The last order placing the child outside the home issued before the filing of the petition to terminate parental rights, rather than each order, must contain the written notice prescribed by s. 48.356 (2). *Waukesha County v. Steven H.* 2000 WI 28, 233 Wis. 2d 344, 607 N.W.2d 607. But see also *Waukesha County v. Lisa K.* 2000 WI App 145, 237 Wis. 2d 830, 615 N.W.2d 204 in which it was held that there was adequate notice when an extension order, which was the final order issued before a TPR petition was filed, did not contain the written notice, but the earlier orders that were extended had.

48.357 Change in placement. (1) (a) The person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel may request a change in the placement of the child or expectant mother, whether or not the change requested is authorized in the dispositional order, as provided in par. (am) or (c), whichever is applicable.

(am) 1. If the proposed change in placement involves any change in placement other than a change in placement specified in par. (c), the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall cause written notice of the proposed change in placement to be sent to the child, the parent, guardian, and legal

custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, the child's court-appointed special advocate, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem. If the expectant mother is an adult, written notice shall be sent to the adult expectant mother and the unborn child by the unborn child's guardian ad litem. The notice shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court.

2. Any person receiving the notice under subd. 1. or notice of a specific placement under s. 48.355 (2) (b) 2., other than a court-appointed special advocate, may obtain a hearing on the matter by filing an objection with the court within 10 days after receipt of the notice. Placements may not be changed until 10 days after that notice is sent to the court unless the parent, guardian, or legal custodian and the child, if 12 years of age or over, or the child expectant mother, if 12 years of age or over, her parent, guardian, or legal custodian and the unborn child by the unborn child's guardian ad litem, or the adult expectant mother and the unborn child by the unborn child's guardian ad litem, sign written waivers of objection, except that changes in placement that were authorized in the dispositional order may be made immediately if notice is given as required under subd. 1. In addition, a hearing is not required for placement changes authorized in the dispositional order except when an objection filed by a person who received notice alleges that new information is available that affects the advisability of the court's dispositional order.

3. If the court changes the child's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain one of the statements specified in sub. (2v) (a) 2.

(c) 1. If the proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the person or agency primarily responsible for implementing the dispositional order, the district attorney, or the corporation counsel shall submit a request for the change in placement to the court. The request shall contain the name and address of the new placement, the reasons for the change in placement, a statement describing why the new placement is preferable to the present placement, and a statement of how the new placement satisfies objectives of the treatment plan ordered by the court. The request shall also contain specific information showing that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies, specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns.

2. The court shall hold a hearing prior to ordering any change in placement requested under subd. 1. Not less than 3 days prior to the hearing, the court shall provide notice of the hearing, together with a copy of the request for the change in placement, to the child, the parent, guardian, and legal custodian of the child, the child's court-appointed special advocate, and all parties that are bound by the dispositional order. If all parties consent, the court may proceed immediately with the hearing.

3. If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings specified in sub. (2v) (a) 1., one of the statements specified in sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination specified in sub. (2v) (a) 3.

(2) If emergency conditions necessitate an immediate change in the placement of a child or expectant mother placed outside the

home, the person or agency primarily responsible for implementing the dispositional order may remove the child or expectant mother to a new placement, whether or not authorized by the existing dispositional order, without the prior notice provided in sub. (1)(am) 1. The notice shall, however, be sent within 48 hours after the emergency change in placement. Any party receiving notice may demand a hearing under sub. (1)(am) 2. In emergency situations, a child may be placed in a licensed public or private shelter care facility as a transitional placement for not more than 20 days, as well as in any placement authorized under s. 48.345 (3).

(2m)(a) The child, the parent, guardian, or legal custodian of the child, the expectant mother, the unborn child by the unborn child's guardian ad litem, or any person or agency primarily bound by the dispositional order, other than the person or agency responsible for implementing the order, may request a change in placement under this paragraph. The request shall contain the name and address of the new placement requested and shall state what new information is available that affects the advisability of the current placement. If the proposed change in placement would change the placement of a child placed in the home to a placement outside the home, the request shall also contain specific information showing that continued placement of the child in the home would be contrary to the welfare of the child and, unless any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies: specific information showing that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns. The request shall be submitted to the court. In addition, the court may propose a change in placement on its own motion.

(b) The court shall hold a hearing on the matter prior to ordering any change in placement requested or proposed under par. (a) if the request states that new information is available that affects the advisability of the current placement, unless the requested or proposed change in placement involves any change in placement other than a change in placement of a child placed in the home to a placement outside the home and written waivers of objection to the proposed change in placement are signed by all persons entitled to receive notice under sub. (1)(am) 1., other than a court-appointed special advocate, and the court approves. If a hearing is scheduled, the court shall notify the child, the parent, guardian, and legal custodian of the child, any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child, the child's court-appointed special advocate, all parties who are bound by the dispositional order, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem, and all parties who are bound by the dispositional order, at least 3 days prior to the hearing. A copy of the request or proposal for the change in placement shall be attached to the notice. If all of the parties consent, the court may proceed immediately with the hearing.

(c) If the court changes the child's placement from a placement in the child's home to a placement outside the child's home, the change in placement order shall contain the findings specified in sub. (2v) (a) 1., one of the statements specified in sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the determination specified in sub. (2v) (a) 3.

(2r) If a hearing is held under sub. (1)(am) 2. or (2m) (b) and the change in placement would remove a child from a foster home, treatment foster home, or other placement with a physical custodian described in s. 48.62 (2), the court shall give the foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing or to submit a written statement prior to the hearing relating to the child and the requested change in placement. A foster parent, treatment

foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1)(am) 1. or (2m) (b) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2v) (a) A change in placement order under sub. (1) or (2m) shall contain all of the following:

1. If the change in placement order changes the child's placement from a placement in the child's home to a placement outside the child's home, a finding that continued placement of the child in his or her home would be contrary to the welfare of the child and, unless a circumstance specified in s. 48.355 (2d) (b) 1. to 5. applies, a finding that the agency primarily responsible for implementing the dispositional order has made reasonable efforts to prevent the removal of the child from the home, while assuring that the child's health and safety are the paramount concerns.

2. If the change in placement order would change the placement of the child to a placement outside the home recommended by the person or agency primarily responsible for implementing the dispositional order, whether from a placement in the home or from another placement outside the home, a statement that the court approves the placement recommended by that person or agency or, if the change in placement order would change the placement of the child to a placement outside the home that is not a placement recommended by that person or agency, whether from a placement in the home or from another placement outside the home, a statement that the court has given bona fide consideration to the recommendations made by that person or agency and all parties relating to the child's placement.

3. If the court finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, a determination that the agency primarily responsible for providing services under the change in placement order is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

(b) The court shall make the findings specified in par. (a) 1. and 3. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the change in placement order. A change in placement order that merely references par. (a) 1. or 3. without documenting or referencing that specific information in the change in placement order or an amended change in placement order that retroactively corrects an earlier change in placement order that does not comply with this paragraph is not sufficient to comply with this paragraph.

(c) 1. If the court finds under par. (a) 3. that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the court shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

3. The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under subd. 2. an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent, or other physical custodian who receives a notice of a hearing under subd. 2. and an opportunity

to be heard under this subdivision does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(4d) (a) Except as provided in par. (b), the court may not change a child's placement to a placement in the home of a person who has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of a parent of the child, if the conviction has not been reversed, set aside or vacated.

(am) Except as provided in par. (b), if a parent in whose home a child is placed is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated, the court shall change the child's placement to a placement out of the home of the parent on petition of the child, the guardian or legal custodian of the child, a person or agency bound by the dispositional order or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the parent.

(b) Paragraphs (a) and (am) do not apply if the court determines by clear and convincing evidence that the placement would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(5m) (a) If a proposed change in placement changes a child's placement from a placement in the child's home to a placement outside the child's home, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court or the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c). If the child is placed outside the child's home, the court shall determine the liability of the parent in the manner provided in s. 46.10 (14).

(b) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department or, in a county having a population of 500,000 or more, the department; the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more; the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(5r) The court may not change the placement of an expectant mother of an unborn child in need of protection or services from a placement in the expectant mother's home to a placement outside of the expectant mother's home unless the court finds that the expectant mother is refusing or has refused to accept any alcohol or other drug abuse services offered to her or is not making or has not made a good faith effort to participate in any alcohol or other drug abuse services offered to her.

(6) No change in placement may extend the expiration date of the original order, except that if the change in placement is from a placement in the child's home to a placement outside the home

the court may extend the expiration date of the original order to the date on which the child reaches 18 years of age, to the date that is one year after the date of the change in placement order, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, to the date on which the child reaches 19 years of age, whichever is later, or for a shorter period of time as specified by the court. If the change in placement is from a placement outside the home to a placement in the child's home and if the expiration date of the original order is more than one year after the date of the change in placement order, the court shall shorten the expiration date of the original order to the date that is one year after the date of the change in placement order or to an earlier date as specified by the court.

History: 1977 c. 354; 1979 c. 300; 1987 a. 27; 1989 a. 31, 107; 1993 a. 16, 385, 395, 446, 481, 491; 1995 a. 27, 77, 275.404; 1997 a. 3.35, 80, 237, 292; 1999 a. 9, 103, 149; 2001 a. 16, 103, 109.

A foster parent is entitled to a hearing under s. 48.63 (4) (a) regarding the person's interest as a foster parent even when placement of the child cannot be affected by the hearing outcome. *Bingenheimer v. DHSS*, 129 Wis. 2d 100, 383 N.W.2d 898 (1986).

48.36 Payment for services. **(1)** (a) If legal custody is transferred from the parent or guardian or the court otherwise designates an alternative placement for the child by a disposition made under s. 48.345 or by a change in placement under s. 48.357, the duty of the parent or guardian or, in the case of a transfer of guardianship and custody under s. 48.839 (4), the duty of the former guardian to provide support shall continue even though the legal custodian or the placement designee may provide the support. A copy of the order transferring custody or designating alternative placement for the child shall be submitted to the agency or person receiving custody or placement and the agency or person may apply to the court for an order to compel the parent or guardian to provide the support. Support payments for residential services, when purchased or otherwise funded or provided by the department or a county department under s. 46.22, 46.23, 51.42 or 51.437, shall be determined under s. 46.10 (14).

(b) In determining the amount of support under par. (a), the court may consider all relevant financial information or other information relevant to the parent's earning capacity, including information reported under s. 49.22 (2m) to the department of workforce development or the county child support agency under s. 59.53 (5). If the court has insufficient information with which to determine the amount of support, the court shall order the child's parent to furnish a statement of income, assets, debts and living expenses, if the parent has not already done so, to the court within 10 days after the court's order transferring custody or designating an alternative placement is entered or at such other time as ordered by the court.

(2) If an expectant mother or a child whose legal custody has not been taken from a parent or guardian is given educational and social services, or medical, psychological or psychiatric treatment by order of the court, the cost of those services or that treatment, if ordered by the court, shall be a charge upon the county in a county having a population of less than 500,000 or the department in a county having a population of 500,000 or more. This section does not prevent recovery of reasonable contribution toward the costs from the parent or guardian of the child or from an adult expectant mother as the court may order based on the ability of the parent, guardian or adult expectant mother to pay. This subsection shall be subject to s. 46.03 (18).

(3) In determining county or departmental liability, this section does not apply to services specified in eh. 115.

History: 1977 c. 354; 1979 c. 221; 1981 c. 81; 1985 a. 29 s. 3202 (23); 1985 a. 176; 1989 a. 31, 107; 1993 a. 436, 481; 1995 a. 27 ss. 2468, 9126 (19); 1995 a. 77, 404; 1997 a. 3, 27, 292.

48.361 Payment for alcohol and other drug abuse services. **(1)** In this section, "alcohol and other drug abuse services" means all of the following:

(a) Any alcohol or other drug abuse examination or assessment ordered by a court under s. 48.295 (1).

(b) Any special treatment or care that relates to alcohol or other drug abuse services ordered by a court under s. 48.345 (6) (a) or 48.347 (4) (a).

(c) Any alcohol or other drug abuse treatment or education ordered by a court under s. 48.345 (6) (a), (13) or (14) or 48.347 (4) (a), (5) or (6) (a).

(2) (a) 1. If a child's parent neglects, refuses or is unable to provide court-ordered alcohol and other drug abuse services for the child through his or her health insurance or other 3rd-party payments, notwithstanding s. 48.36 (3), the judge may order the parent to pay for the court-ordered alcohol and drug abuse services. If the parent consents to provide court-ordered alcohol and other drug abuse services for a child through his or her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered alcohol and other drug abuse services the court may order the health insurance provider or 3rd-party payer to pay for the court-ordered alcohol and other drug abuse services in accordance with the terms of the parent's health insurance policy or other 3rd-party payment plan.

1m. If an adult expectant mother neglects, refuses or is unable to obtain court-ordered alcohol and other drug abuse services for herself through her health insurance or other 3rd-party payments, the judge may order the adult expectant mother to pay for the court-ordered alcohol and drug abuse services. If the adult expectant mother consents to obtain court-ordered alcohol and other drug abuse services for herself through her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered alcohol and other drug abuse services, the court may order the health insurance provider or 3rd-party payer to pay for the court-ordered alcohol and other drug abuse services in accordance with the terms of the adult expectant mother's health insurance policy or other 3rd-party payment plan.

2. This paragraph applies to payment for alcohol and other drug abuse services in any county, regardless of whether the county is a pilot county under s. 48.547.

(am) 1. If a court in a county that has an alcohol or other drug abuse program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with par. (h).

2. If a court in a county that does not have an alcohol and other drug abuse program under s. 48.547 finds that payment is not attainable under par. (a), the court may order payment in accordance with s. 48.345 (6) (a), 48.347 (4) (a) or 48.36.

(b) 1. In counties that have an alcohol and other drug abuse program under s. 48.547, in addition to using the alternative provided for under par. (a), the court may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the child's county of legal residence to pay for the court-ordered alcohol and other drug abuse services whether or not custody has been taken from the parent.

1m. In counties that have an alcohol and other drug abuse program under s. 48.547, in addition to using the alternative provided for under par. (a), the court may order a county department of human services established under s. 46.23 or a county department established under s. 51.42 or 51.437 in the adult expectant mother's county of legal residence to pay for the court-ordered alcohol and other drug abuse services provided for the adult expectant mother.

2. If a judge orders a county department established under s. 51.42 or 51.437 to provide alcohol and other drug abuse services under this paragraph, the provision of the alcohol and other drug abuse services shall be subject to conditions specified in ch. 51.

(c) Payment for alcohol and other drug abuse services by a county department under this section does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of alcohol and other

drug abuse services. Payment by the county under this section does not prevent recovery of reasonable contribution toward the costs of the court-ordered alcohol and other drug abuse services from the parent or adult expectant mother which is based upon the ability of the parent or adult expectant mother to pay. This subsection is subject to s. 46.03 (18).

History: 1987 a. 339; 1989 a. 56 s. 259; 1993 a. 446; 1995 a. 77, 275; 1997 a. 292.

48.362 Payment for certain special treatment or care services. (1) In this section, "special treatment or care" has the meaning given in s. 48.02 (17m), except that it does not include alcohol and other drug abuse services.

(2) This section applies to the payment of court-ordered special treatment or care under s. 48.345 (6) (a), whether or not custody has been taken from the parent, and to the payment of court-ordered special treatment or care under s. 48.347 (4) (a).

(3) If a child's parent neglects, refuses or is unable to provide court-ordered special treatment or care for the child through his or her health insurance or other 3rd-party payments, notwithstanding s. 48.36 (3), the judge may order the parent to pay for the court-ordered special treatment or care. If the parent consents to provide court-ordered special treatment or care for a child through his or her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered special treatment or care, the judge may order the health insurance provider or 3rd-party payer to pay for the court-ordered special treatment or care in accordance with the terms of the parent's health insurance policy or other 3rd-party payment plan.

(3m) If an adult expectant mother neglects, refuses or is unable to obtain court-ordered special treatment or care for herself through her health insurance or other 3rd-party payments, the judge may order the adult expectant mother to pay for the court-ordered special treatment or care. If the adult expectant mother consents to obtain court-ordered special treatment or care for herself through her health insurance or other 3rd-party payments but the health insurance provider or other 3rd-party payer refuses to provide the court-ordered special treatment or care, the judge may order the health insurance provider or 3rd-party payer to pay for the court-ordered special treatment or care in accordance with the terms of the adult expectant mother's health insurance policy or other 3rd-party payment plan.

(4) (a) If the judge finds that payment is not attainable under sub. (3) or (3m), the judge may order the county department under s. 51.42 or 51.437 of the county of legal residence of the child or expectant mother to pay the cost of any court-ordered special treatment or care that is provided by or under contract with that county department.

(b) Payment for special treatment or care by a county department under par. (a) does not prohibit the county department from contracting with another county department or approved treatment facility for the provision of special treatment or care.

(c) A county department that pays for court-ordered special treatment or care under par. (a) may recover from the parent or adult expectant mother, based on the ability of the parent or adult expectant mother to pay, a reasonable contribution toward the costs of the court-ordered special treatment or care. This paragraph is subject to s. 46.03 (18).

History: 1993 a. 346; 1995 a. 77, 275; 1997 a. 292.

48.363 Revision of dispositional orders. (1) A child, the child's parent, guardian or legal custodian, an expectant mother, an unborn child by the unborn child's guardian ad litem, any person or agency bound by a dispositional order or the district attorney or corporation counsel in the county in which the dispositional order was entered may request a revision in the order that does not involve a change in placement, including a revision with respect to the amount of child support to be paid by a parent, or the court may on its own motion propose such a revision. The request or court proposal shall set forth in detail the nature of the proposed revision and what new information is available that affects the

advisability of the court's disposition. The request or court proposal shall be submitted to the court. The court shall hold a hearing on the matter prior to any revision of the dispositional order if the request or court proposal indicates that new information is available which affects the advisability of the court's dispositional order, unless written waivers of objections to the revision are signed by all parties entitled to receive notice and the court approves.

(b) If a hearing is held, the court shall notify the child, the child's parent, guardian and legal custodian, all parties bound by the dispositional order, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered, and, if the child is the expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem; or shall notify the adult expectant mother, the unborn child through the unborn child's guardian ad litem, all parties bound by the dispositional order and the district attorney or corporation counsel in the county in which the dispositional order was entered, at least 3 days prior to the hearing. A copy of the request or proposal shall be attached to the notice. If all parties consent, the court may proceed immediately with the hearing. No revision may extend the effective period of the original order.

(c) If the proposed revision is for a change in the amount of child support to be paid by a parent, the court shall order the child's parent to provide a statement of income, assets, debts and living expenses to the court and the person or agency primarily responsible for implementing the dispositional order by a date specified by the court. The clerk of court shall provide, without charge, to any parent ordered to provide a statement of income, assets, debts and living expenses a document setting forth the percentage standard established by the department of workforce development under s. 49.22 (9) and the manner of its application established by the department of health and family services under s. 46.247 and listing the factors that a court may consider under s. 46.10 (14) (c).

(d) If the court orders the child's parent to provide a statement of income, assets, debts and living expenses to the court or if the court orders the child's parent to provide that statement to the person or agency primarily responsible for implementing the dispositional order and that person or agency is not the county department or, in a county having a population of 500,000 or more, the department, the court shall also order the child's parent to provide that statement to the county department or, in a county having a population of 500,000 or more, the department by a date specified by the court. The county department or, in a county having a population of 500,000 or more, the department shall provide, without charge, to the parent a form on which to provide that statement, and the parent shall provide that statement on that form. The county department or, in a county having a population of 500,000 or more, the department shall use the information provided in the statement to determine whether the department may claim federal foster care and adoption assistance reimbursement under 42 USC 670 to 679a for the cost of providing care for the child.

(1m) If a hearing is held under sub. (1) (a), any party may present evidence relevant to the issue of revision of the dispositional order. In addition, the court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of revision. A foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under sub. (1) (a) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2) If the court revises a dispositional order with respect to the amount of child support to be paid by a parent for the care and

maintenance of the parent's minor child who has been placed by a court order under this chapter in a residential, nonmedical facility, the court shall determine the liability of the parent in the manner provided in s. 46.10 (14).

History: 1977 c. 354; 1979 c. 300; 1985 a. 172; 1993 a. 481; 1995 a. 275, 404; 1997 a. 3, 80, 237, 292; 1999 a. 103, 149; 2001 a. 38, 109.

Sub. (1) does not set the procedure to adjudicate the issue of residence for an incompetent minor whose parent's residence has changed. *Washington County v. Dodge County*, 229 Wis. 2d 766, 601 N.W.2d 296 (Ct. App. 1999).

48.365 Extension of orders. (1) In this section, a child is considered to have been placed outside of his or her home on the date on which the child was first removed from his or her home.

(1) The parent, child, guardian, legal custodian, expectant mother, unborn child by the unborn child's guardian ad litem, any person or agency bound by the dispositional order, the district attorney or corporation counsel in the county in which the dispositional order was entered or the court on its own motion, may request an extension of an order under s. 48.355 including an order under s. 48.355 that was entered before the child was born. The request shall be submitted to the court which entered the order. No order under s. 48.355 may be extended except as provided in this section.

(2) No order may be extended without a hearing. The court shall notify the child, the child's parent, guardian and legal custodian, all the parties present at the original hearing, the child's foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2), the child's court-appointed special advocate, the district attorney or corporation counsel in the county in which the dispositional order was entered and, if the child is an expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child through the unborn child's guardian ad litem, all the parties present at the original hearing and the district attorney or corporation counsel in the county in which the dispositional order was entered, of the time and place of the hearing.

(2g) (a) At the hearing the person or agency primarily responsible for providing services to the child or expectant mother shall file with the court a written report stating to what extent the dispositional order has been meeting the objectives of the plan for the rehabilitation or care and treatment of the child or for the rehabilitation and treatment of the expectant mother and the care of the unborn child.

(b) If the child is placed outside of his or her home, the report shall include all of the following:

1. A copy of the report of the review panel under s. 48.38 (5), if any, and a response to the report from the agency primarily responsible for providing services to the child.

2. An evaluation of the child's adjustment to the placement and of any progress the child has made, suggestions for amendment of the permanency plan, and specific information showing the efforts that have been made to achieve the goal of the permanency plan, including, if applicable, the efforts of the parents to remedy the factors that contributed to the child's placement, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

3. If the child has been placed outside of his or her home for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, a statement of whether or not a recommendation has been made to terminate the parental rights of the parents of the child. If a recommendation for a termination of parental rights has been made, the statement shall indicate the date on which the recommendation was made, any previous progress made to accomplish the termination of parental rights, any barriers to the termination of parental rights, specific steps to overcome the barriers and when the steps will be completed, reasons why adoption would be in the best interest of the

child, and whether or not the child should be registered with the adoption information exchange. If a recommendation for termination of parental rights has not been made, the statement shall include an explanation of the reasons why a recommendation for termination of parental rights has not been made. If the lack of appropriate adoptive resources is the primary reason for not recommending a termination of parental rights, the agency shall recommend that the child be registered with the adoption information exchange or report the reason why registering the child is contrary to the best interest of the child.

(c) In cases where the child has not been placed outside the home, the report shall contain a description of efforts that have been made by all parties concerned toward meeting the objectives of treatment, care or rehabilitation, an explanation of why these efforts have not yet succeeded in meeting the objective, and anticipated future planning for the child.

(2m) (a) 1. Any party may present evidence relevant to the issue of extension. If the child is placed outside of his or her home, the person or agency primarily responsible for providing services to the child shall present as evidence specific information showing that the agency has made reasonable efforts to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies. The judge shall make findings of fact and conclusions of law based on the evidence. The findings of fact shall include a finding as to whether reasonable efforts were made by the agency primarily responsible for providing services to the child to achieve the goal of the child's permanency plan, unless return of the child to the home is the goal of the permanency plan and the judge finds that any of the circumstances specified in s. 48.355 (2d) (h) 1. to 5. applies. An order shall be issued under s. 48.355.

2. If the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the order shall include a determination that the person or agency primarily responsible for providing services to the child is not required to make reasonable efforts with respect to the parent to make it possible for the child to return safely to his or her home.

3. The judge shall make the findings specified in subd. 1. relating to reasonable efforts to achieve the goal of the child's permanency plan and the findings specified in subd. 2. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the order issued under s. 48.355. An order that merely references subd. 1. or 2. without documenting or referencing that specific information in the order or an amended order that retroactively corrects an earlier order that does not comply with this subdivision is not sufficient to comply with this subdivision.

(ad) 1. If the judge finds that any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies with respect to a parent, the judge shall hold a hearing within 30 days after the date of that finding to determine the permanency plan for the child. If a hearing is held under this subdivision, the agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.

2. If a hearing is held under subd. 1., at least 10 days before the date of the hearing the court shall notify the child, any parent, guardian, and legal custodian of the child, and any foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) of the child of the time, place, and purpose of the hearing.

(ag) The court shall give a foster parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (ad) 2. or sub. (2) an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent, or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issue of extension. A foster

parent, treatment foster parent, or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under par. (ad) 2. or sub. (2) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(b) If a child has been placed outside the home under s. 48.345, or if an adult expectant mother has been placed outside the home under s. 48.347, and an extension is ordered under this subsection, the judge shall state in the record the reason for the extension.

(3) The appearance of any child may be waived by consent of the child, counsel or guardian ad litem.

(4) The judge shall determine which dispositions are to be considered for extensions.

(5) Except as provided in s. 48.368, an order under this section that continues the placement of a child in his or her home or that relates to an unborn child of an adult expectant mother shall be for a specified length of time not to exceed one year after its date of entry. Except as provided in s. 48.368, an order under this section that continues the placement of a child in an out-of-home placement shall be for a specified length of time not to exceed the date on which the child reaches 18 years of age, one year after the date of entry of the order, or, if the child is a full-time student at a secondary school or its vocational or technical equivalent and is reasonably expected to complete the program before reaching 19 years of age, the date on which the child reaches 19 years of age, whichever is later.

(6) If a request to extend a dispositional order is made prior to the termination of the order, but the court is unable to conduct a hearing on the request prior to the termination date, the court may extend the order for a period of not more than 30 days, not including any period of delay resulting from any of the circumstances specified in s. 48.315 (1).

(7) Nothing in this section may be construed to allow any changes in placement. Changes in placement may take place only under s. 48.357.

History: 1977 c. 354; 1979 c. 300; 1983 a. 351, 399, 538; 1985 a. 172; 1987 a. 383; 1989 a. 31, 86, 107, 359; 1993a. 16, 98, 377, 446; 1995 a. 27, 77, 275; 1997 a. 27, 80, 237, 292; 1999 a. 32, 149; 2001 a. 109.

A dispositional order may be extended without a finding of dangerousness. In Interest of R.E.H. 101 Wis. 2d 637, 305 N.W.2d 162 (Ct. App. 1981).

An extension under sub. (6) does not deprive a juvenile of liberty without due process. In Interest of S.D.R. 109 Wis. 2d 567, 326 N.W.2d 762 (1982).

Mandatory time limits affect a trial court's competency to act, but an objection must be raised before the trial court to avoid waiver. In Interest of L.M.C. 146 Wis. 2d 377, 430 N.W.2d 352 (Ct. App. 1988).

The court may extend a dispositional order for 30 days under sub. (6) to consider a petition to extend the original order even when the juvenile turns 18 during the extension period. In Interest of W.P. 153 Wis. 2d 50, 449 N.W.2d 615 (1990).

The court loses competence to exercise jurisdiction to extend an order when a hearing is not held within the 30-day period under sub. (6); the 30-day period may not be expanded by continuance under s. 48.315 and the court's loss of competence cannot be waived. In Interest of B.J.N. 162 Wis. 2d 635, 469 N.W.2d 845 (1991).

48.366 Extended court jurisdiction. (1) APPLICABILITY.

(a) Subject to par. (c), if the person committed any crime specified under s. 940.01, 940.02, 940.05, 940.21, 940.225 (1) (a) to (c), 948.03 or 948.04, is adjudged delinquent on that basis and is placed in a secured correctional facility under s. 48.34 (4m), 1993 stats., the court shall enter an order extending its jurisdiction as follows:

1. If the act for which the person was adjudged delinquent was a violation of s. 940.01, the order shall remain in effect until the person reaches 25 years of age or until the termination of the order under sub. (6), whichever occurs earlier.

2. If the act for which the person was adjudged delinquent was any other violation specified in this paragraph, the order shall remain in effect until the person reaches 21 years of age or until the termination of the order under sub. (6), whichever occurs earlier.

(b) Subject to par. (c), if the person committed a crime specified in s. 940.20 (1) or 946.43 while placed in a secured correctional facility and is adjudged delinquent on that basis following

transfer of jurisdiction under s. 970.032, the court shall enter an order extending its jurisdiction until the person reaches 21 years of age or until termination of the order under sub. (6), whichever occurs earlier.

(c) A court may not enter an order extending its jurisdiction as provided in par. (a) or (b) with respect to any violation committed after June 30, 1996.

(5) REVISION OF ORDER. (a) Any of the following may petition the court for a revision of an order:

1. The person subject to the order.

2. The department of corrections or county department ordered under s. 48.34 (4n), 1993 stats., to provide aftercare supervision of the person.

(b) The department of corrections or county department may, at any time, file a petition proposing either release of a person subject to an order to aftercare supervision or revocation of the person's aftercare supervision. The petition shall set forth in detail:

1. The proposed treatment and supervision plan and proposed institutional placement, if any.

2. Any available information that is relevant to the advisability of revising the order.

(c) The person subject to an order may, no more often than once each year, file a petition proposing his or her release to aftercare supervision. The petition shall set forth in detail:

1. The proposed conditions of aftercare supervision.

2. Any available information that is relevant to the advisability of revising the order.

(d) 1. At the time the department of corrections or county department files a petition under par. (a), it shall provide written notice of the petition to the person who is the subject of the petition. The notice to the person who is the subject of the petition shall state that the person has a right to request a hearing on the petition and, if the petition is for revocation of a person's aftercare supervision, that the person has the right to counsel. The department of corrections or county department shall also provide written notice of the petition to the office of the district attorney that filed the petition on the basis of which the child was adjudged delinquent and the victim, if any, of the delinquent act.

2. At the time a person subject to an order files a petition under par. (a), the person shall provide written notice of the petition to the department of corrections or county department, as applicable.

(e) In making a determination under this subsection, the court shall balance the needs of the person with the protection of the public.

(f) If the court grants a petition to release a person to aftercare supervision and the person's county of residence is one in which the county department provides aftercare supervision, the department of corrections may contract with the county department under s. 301.08 (2) for aftercare supervision of the person.

(g) Sections 48.357 and 48.363 do not apply to orders under this subsection.

(6) PETITION FOR DISCHARGE; HEARINGS. (a) Any of the following may petition the court that entered an order to terminate the order and to discharge the person subject to the order from supervision:

1. The person subject to the order.

2. The department of corrections or county department ordered under s. 48.34 (4n), 1993 stats., to provide aftercare supervision of the person.

(b) The petition shall state the factual basis for the petitioner's belief that discharge will not pose a threat of bodily harm to other persons. The department of corrections or county department may file a petition at any time. The person subject to the order may file a petition not more often than once a year.

(c) 1. At the time the department of corrections or county department files a petition under par. (a), it shall provide written notice of the petition to the person who is the subject of the peti-

tion. The notice to the person who is the subject of the petition shall state that the person has the right to counsel. The department of corrections or county department shall also provide written notice of the petition to the office of the district attorney that filed the petition on the basis of which the person was adjudged delinquent and to the victim, if any, of the delinquent act.

2. At the time a person subject to an order files a petition under par. (a), he or she shall provide written notice of the petition to the department of corrections or county department, whichever has been ordered under s. 48.34 (4n), 1993 stats., to provide aftercare supervision of the person.

(d) If the court denies the petition, the person shall remain under the jurisdiction of the court until the expiration of the order or until a subsequent petition for discharge under this subsection is granted, whichever is sooner.

(7) NOTICE OF HEARING. Upon receipt of a request for a hearing under sub. (5) or upon receipt of a petition under sub. (6), the court shall set a date for a hearing on the matter. In any of those cases, the court shall notify the department of corrections and each person specified in sub. (5)(d) 1. or (6)(c) 1. of the hearing at least 7 days before the hearing, except that if any such person lives outside of this state, the notice shall be mailed at least 14 days before the hearing.

(8) TRANSFER TO OR BETWEEN FACILITIES. The department of corrections may transfer a person subject to an order between secured correctional facilities. After the person attains the age of 17 years, the department of corrections may place the person in a state prison named in s. 302.01, except that the department of corrections may not place any person under the age of 18 years in the correctional institution authorized in s. 301.16 (1n). If the person is 15 years of age or over, the department of corrections may transfer the person to the Racine youthful offender correctional facility named in s. 302.01 as provided in s. 938.357 (4)(d). If the department of corrections places a person subject to an order under this section in a state prison, that department shall provide services for that person from the appropriate appropriation under s. 20.410 (1). The department of corrections may transfer a person placed in a state prison under this subsection to or between state prisons named in s. 302.01 without petitioning for revision of the order under sub. (5)(a), except that the department of corrections may not transfer any person under the age of 18 years to the correctional institution authorized in s. 301.16 (1n).

History: 1987 a. 27; 1989 a. 31, 107,359; 1993 a. 98,385; 1995 a. 27,77; 1997 a. 27, 35; 2001 a. 16.

48.368 Continuation of dispositional orders. (1) If a petition for termination of parental rights is filed under s. 48.41 or 48.415 or an appeal from a judgment terminating or denying termination of parental rights is filed during the year in which a dispositional order under s. 48.355 or an extension order under s. 48.365 is in effect, the dispositional or extension order shall remain in effect until all proceedings related to the filing of the petition or an appeal are concluded.

(2) If a child's placement with a guardian appointed under s. 48.977 (2) is designated by the court under s. 48.977 (3) as a permanent foster placement for the child while a dispositional order under s. 48.345, a revision order under s. 48.363 or an extension order under s. 48.365 is in effect with respect to the child, such dispositional order, revision order or extension order shall remain in effect until the earliest of the following:

(a) Thirty days after the guardianship terminates under s. 48.977 (7).

(b) A court enters a change in placement order under s. 48.357.

(c) A court order terminates such dispositional order, revision order or extension order.

(d) The child attains the age of 18 years.

History: 1989 a. 86; 1993 a. 446; Stats. 1993 s. 38,368; 1995 a. 275; 1997 a. 80.

48.37 Costs. ~~(A)~~ court assigned to exercise jurisdiction under this chapter and ch. 938 ~~may~~ not assess costs or assessments

against a child under 14 years of age but may assess costs against a child 14 years of age or older.

(2) Notwithstanding sub. (1), no costs, penalty assessments or jail assessments may be assessed against any child in a circuit court exercising jurisdiction under s. 48.16.

History: 1977 c. 354, 449; 1979 c. 300, 359; 1987 a. 27; 1991 a. 263; 1993 a. 387; 1995 a. 77.

48.371 Access to certain information by substitute care provider. (1) If a child is placed in a foster home, treatment foster home, group home, or residential care center for children and youth, including a placement under s. 48.205 or 48.21,

the agency, as defined in s. 48.38 (1) (a), that placed the child or arranged for the placement of the child shall provide the following information to the foster parent, treatment foster parent, or operator of the group home or residential care center for children and youth at the time of placement or, if the information has not been provided to the agency by that time, as soon as possible after the date on which the agency receives that information, but not more than 2 working days after that date:

(a) Results of a test or a series of tests of the child to determine the presence of HIV, as defined in s. 968.38 (1) (b), antigen or non-antigenic products of HIV, or an antibody to HIV, as provided under s. 252.15 (5) (a) 19., including results included in a court report or permanency plan. At the time that the test results are provided, the agency shall notify the foster parent, treatment foster parent, or operator of the group home or residential care center for children and youth of the confidentiality requirements under s. 252.15 (6).

(b) Results of any tests of the child to determine the presence of viral hepatitis, type B, including results included in a court report or permanency plan. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(c) Any other medical information concerning the child that is necessary for the care of the child. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(3) At the time of placement of a child in a foster home, treatment foster home, group home, or residential care center for children and youth or, if the information is not available at that time, as soon as possible after the date on which the court report or permanency plan has been submitted, but no later than 7 days after that date, the agency, as defined in s. 48.38 (1) (a), responsible for preparing the child's permanency plan shall provide to the foster parent, treatment foster parent, or operator of the group home or residential care center for children and youth information contained in the court report submitted under s. 48.33 (1), 48.365 (2g), 48.425 (1), 48.831 (2) or 48.837 (4) (c) or permanency plan submitted under s. 48.355 (2e), 48.38, 48.43 (1) (c) or (5) (c), 48.63 (4) or (5) (c) or 48.831 (4) (e) relating to findings or opinions of the court or agency that prepared the court report or permanency plan relating to any of the following:

(a) Any mental, emotional, cognitive, developmental, or behavioral disability of the child. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this subsection shall keep the information confidential.

(b) Any involvement of the child in any criminal gang, as defined in s. 939.22 (9), or in any other group in which any child was traumatized as a result of his or her association with that group. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(c) Any involvement of the child in any activities that are harmful to the child's physical, mental, or moral well-being. The

foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(d) Any involvement of the child, whether as victim or perpetrator, in sexual intercourse or sexual contact in violation of s. 940.225, 948.02, or 948.025, prostitution in violation of s. 944.30, sexual exploitation of a child in violation of s. 948.05, or causing a child to view or listen to sexual activity in violation of s. 948.055, if the information is necessary for the care of the child or for the protection of any person living in the foster home, treatment foster home, group home, or residential care center for children and youth. The foster parent, treatment foster parent, or operator of a group home or residential care center for children and youth receiving information under this paragraph shall keep the information confidential.

(e) The religious affiliation or belief of the child.

History: 1993 a. 395; 1995 a. 275; 1997 a. 272; 2001 a. 59, 69. 105.

NOTE: 1993 Wis. Act 395, which created this section, contains extensive explanatory notes.

48.373 Medical authorization. (1) The court assigned to exercise jurisdiction under this chapter and ch. 938 may authorize medical services including surgical procedures when needed if the court assigned to exercise jurisdiction under this chapter and ch. 938 determines that reasonable cause exists for the services and that the minor is within the jurisdiction of the court assigned to exercise jurisdiction under this chapter and ch. 938 and consents.

(2) Section 48.375 (7) applies if the medical service authorized under sub. (1) is an abortion.

(3) In a proceeding under s. 48.375 (7), a circuit court exercising jurisdiction under s. 48.16 may not authorize any medical services other than the performance or inducement of an abortion.

History: 1971 c. 105; 1977 c. 354 s. 64; 1977 c. 449; Stats. 1977 s. 48.373; 1991 a. 263; 1993 a. 32; 1995 a. 77.

48.375 Parental consent required prior to abortion; judicial waiver procedure. (1) **LEGISLATIVE FINDINGS AND INTENT.** (a) The legislature finds that:

1. Immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences.

2. The medical, emotional and psychological consequences of abortion and of childbirth are serious and can be lasting, particularly when the patient is immature.

3. The capacity to become pregnant and the capacity for mature judgment concerning the wisdom of bearing a child or of having an abortion are not necessarily related.

4. Parents ordinarily possess information essential to a physician's exercise of the physician's best medical judgment concerning a minor.

5. Parents who are aware that their minor is pregnant or has had an abortion may better ensure that she receives adequate medical attention during her pregnancy or after her abortion.

6. Parental knowledge of a minor's pregnancy and parental consent to an abortion are usually desirable and in the best interest of the minor.

(b) It is the intent of the legislature in enacting this section to further the purposes set forth in s. 48.01, and in particular to further the important and compelling state interests in:

1. Protecting minors against their own immaturity.

2. Fostering the family structure and preserving it as a viable social unit.

3. Protecting the rights of parents to rear minors who are members of their households.

(2) **DEFINITIONS.** In this section:

(a) "Abortion" means the use of any instrument, medicine, drug or any other substance or device with intent to terminate the pregnancy of a minor after implantation of a fertilized human

ovum and with intent other than to increase the probability of a live birth, to preserve the life or health of the infant after live birth or to remove a dead fetus.

(b) “Adult family member” means any of the following who is at least 25 years of age:

1. Grandparent.
2. Aunt.
3. Uncle.
4. Sister.
5. Brother.

(c) “Counselor” means a physician including a physician specializing in psychiatry, a licensed psychologist, as defined in s. 455.01 (4), or an ordained member of the clergy. “Counselor” does not include any person who is employed by or otherwise affiliated with a reproductive health care facility, a family planning clinic or a family planning agency; any person affiliated with the performance of abortions, except abortions performed to save the life of the mother; or any person who may profit from giving advice to seek an abortion.

(d) Notwithstanding s. 48.02 (2m), “court” means any circuit court within this state.

(e) “Emancipated minor” means a minor who is or has been married; a minor who has previously given birth; or a minor who has been freed from the care, custody and control of her parents, with little likelihood of returning to the care, custody and control prior to marriage or prior to reaching the age of majority.

(em) “Member of the clergy” has the meaning given in s. 765.002 (1).

(g) “Physician” means a person licensed to practice medicine and surgery under ch. 448.

(h) “Referring physician” means a physician who refers a minor to another physician for the purpose of obtaining an abortion.

(3) **APPLICABILITY.** This section applies whether or not the minor who initiates the proceeding is a resident of this state.

(4) **PARENTAL CONSENT REQUIRED.** (a) Except as provided in this section, no person may perform or induce an abortion on or for a minor who is not an emancipated minor unless the person is a physician and one of the following applies:

1. The person or the person’s agent has, either directly or through a referring physician or his or her agent, received and made part of the minor’s medical record, under the requirements of s. 253.10, the voluntary and informed written consent of the minor and the voluntary and informed written consent of one of her parents; or of the minor’s guardian or legal custodian, if one has been appointed; or of an adult family member of the minor; or of one of the minor’s foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor’s parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor.

2. The court has granted a petition under sub. (7).

(b) Paragraph (a) does not apply if the person who intends to perform or induce the abortion is a physician and any of the following occurs:

1. The person who intends to perform or induce the abortion believes, to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion.

- 1g. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, in which the minor swears that the pregnancy is the result of a sexual assault in violation of s. 940.225 (1), (2) or (3) in which the minor did not indicate a freely given agreement to have sexual intercourse. The person who intends to perform or induce the abortion shall place the statement in the minor’s medi-

cal record and report the sexual intercourse as required under s. 48.981 (2) or (2m) (e). Any minor who makes a false statement under this subdivision, which the minor does not believe is true, is subject to a proceeding under s. 938.12 or 938.13 (12), whichever is applicable, based on a violation of s. 946.32 (2).

- 1m. A physician who specializes in psychiatry or a licensed psychologist, as defined in s. 455.01 (4), states in writing that the physician or psychologist believes, to the best of his or her professional judgment based on the facts of the case before him or her, that the minor is likely to commit suicide rather than file a petition under s. 48.257 or approach her parent, or guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or one of the minor’s foster parents or treatment foster parents, if the minor has been placed in a foster home or treatment foster home and the minor’s parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, for consent.

2. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that the pregnancy is the result of sexual intercourse with a caregiver specified in s. 48.981 (1) (am) 1., 2., 3., 4. or 8. The person who intends to perform or induce the abortion shall place the statement in the minor’s medical record. The person who intends to perform or induce the abortion shall report the sexual intercourse as required under s. 48.981 (2m) (d) 1.

3. The minor provides the person who intends to perform or induce the abortion with a written statement, signed and dated by the minor, that a parent who has legal custody of the minor, or the minor’s guardian or legal custodian, if one has been appointed, or an adult family member of the minor, or a foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor’s parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, has inflicted abuse on the minor. The person who intends to perform or induce the abortion shall place the statement in the minor’s medical record. The person who intends to perform or induce the abortion shall report the abuse as required under s. 48.981 (2).

(5) **COUNSELING.** Any minor who is pregnant and who is seeking an abortion and any minor who has had an abortion may receive counseling from a counselor of her choice. A county department may refer the minor to a private counselor.

(6) **RIGHT TO PETITION COURT FOR WAIVER.** Any pregnant minor who is seeking an abortion in this state, and any member of the clergy on the minor’s behalf, may file a petition specified under s. 48.257 with any court for a waiver of the parental consent requirement under sub. (4) (a) 1.

(7) **COURT PROCEDURE.** (a) *Receipt of petition; initial appearance.* On the date that a petition under s. 48.257 is filed, or if it is impossible to do so on that day, on the next calendar day, the court shall hold an initial appearance in chambers at which the minor or the member of the clergy who filed the petition on behalf of the minor, if any, is present and shall do all of the following:

1. Appoint legal counsel under s. 48.23 (1m) (cm) for the minor if the minor is not represented by counsel.

3. Set a time for a hearing on the petition that will enable the court to comply with the time limit specified in par. (d) 1.

4. Notify the minor, the minor’s counsel, if any, the member of the clergy who filed the petition on behalf of the minor, if any, and the minor’s guardian ad litem, if any, of the time, date and place of the hearing.

(am) *Guardian ad litem; appointment.* At the initial appearance under par. (a), the court may also, in its discretion, appoint a guardian ad litem under s. 48.235 (1) (d).

(b) *Hearing; evidence.* The court shall hold a confidential hearing on a petition that is filed by a minor. The hearing shall be held in chambers, unless a public fact-finding hearing is

demanded by the minor through her counsel. At the hearing, the court shall consider the report of the guardian ad litem, if any, and hear evidence relating to all of the following:

1. The emotional development, maturity, intellect and understanding of the minor.

2. The understanding of the minor about the nature of, possible consequences of and alternatives to the intended abortion procedure.

3. Any other evidence that the court may find useful in making the determination under par. (c).

(bm) *Member of the clergy's affidavit.* If a member of the clergy files a petition under s. 48.257 on behalf of a minor, the member of the clergy shall file with the petition an affidavit stating that the member of the clergy has met personally with the minor and has explored with the minor the alternative choices available to the minor for managing the pregnancy, including carrying the pregnancy to term and keeping the infant, carrying the pregnancy to term and placing the infant with a relative or with another family for adoption or having an abortion, and has discussed with the minor the possibility of involving one of the persons specified in sub. (4) (a) 1. in the minor's decision making concerning the pregnancy and whether or not in the opinion of the minor that involvement would be in the minor's best interests. The court may make the determination under par. (c) on the basis of the ordained member of the clergy's affidavit or may, in its discretion, require the minor to attend an interview with the court in chambers before making that determination. Any information supplied by a minor to a member of the clergy in preparation of the petition under s. 48.257 or the affidavit under this paragraph shall be kept confidential and may only be disclosed to the court in connection with a proceeding under this subsection.

(c) *Determination.* The court shall grant the petition if the court finds that any of the following standards applies:

1. That the minor is mature and well-informed enough to make the abortion decision on her own.

2. That the performance or inducement of the abortion is in the minor's best interests.

(d) *Time limit.* 1. The court shall make the determination under par. (c) and issue an order within 3 calendar days after the initial appearance unless the minor and her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of the time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition within 24 hours after making the determination and order. If the court grants the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a certified copy of the court's order granting the petition. If the court denies the petition, the court shall immediately so notify the minor by personal service on her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, of a copy of the court's order denying the petition and shall also notify the minor by her counsel, or the member of the clergy who filed the petition on behalf of the minor, if any, that she has a right to initiate an appeal under s. 809.105.

1m. Except as provided under s. 48.315 (1) (b), (c), (f), and (h), if the court fails to comply with the time limits specified under subd. 1. without the prior consent of the minor and the minor's counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, the minor and the minor's counsel, if any, or the member of the clergy, if any, shall select a temporary reserve judge, as defined in s. 753.075 (1) (b), to make the determination under par. (c) and issue an order granting or denying the petition and the chief judge of the judicial administrative district in which the court is located shall assign the temporary reserve judge selected by the minor and the minor's counsel, if any, or the member of the clergy, if any, to make the determination and issue the order. A temporary reserve judge assigned under this subdivi-

sion to make a determination under par. (c) and issue an order granting or denying a petition shall make the determination and issue the order within 2 calendar days after the assignment, unless the minor and her counsel, if any, or the member of the clergy who filed the petition on behalf of the minor, if any, consent to an extension of that time period. The order shall be effective immediately. The court shall prepare and file with the clerk of court findings of fact, conclusions of law and a final order granting or denying the petition, and shall notify the minor of the court's order, as provided under subd. 1.

2. Counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall immediately, upon notification under subd. 1. or 1m. that the court has granted or denied the petition, notify the minor. If the court has granted the petition, counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the court order to the person who intends to perform or induce the abortion. If with reasonable diligence the person who intends to perform or induce the abortion cannot be located for delivery, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall leave a certified copy of the order with the person's agent at the person's principal place of business. If a clinic or medical facility is specified in the petition as the corporation, limited liability company, partnership or other unincorporated association that employs the person who intends to perform or induce the abortion, then counsel for the minor, or the member of the clergy who filed the petition on behalf of the minor, if any, shall hand deliver a certified copy of the order to an agent of the corporation, limited liability company, partnership or other unincorporated association at its principal place of business. There may be no service by mail or publication. The person or agent who receives the certified copy of the order under this subdivision shall place the copy in the minor's medical record.

(e) *Confidentiality.* The identity of a minor who files or for whom is filed a petition under s. 48.257 and all records and other papers relating to a proceeding under this subsection shall be kept confidential except for use in a forfeiture action under s. 895.037 (2), a civil action filed under s. 895.037 (3) or a child abuse or neglect investigation under s. 48.981.

(f) *Certain persons barred from proceedings.* No parent, or guardian or legal custodian, if one has been appointed, or foster parent or treatment foster parent, if the minor has been placed in a foster home or treatment foster home and the minor's parent has signed a waiver granting the department, a county department, the foster parent or the treatment foster parent the authority to consent to medical services or treatment on behalf of the minor, or adult family member, of any minor who is seeking a court determination under this subsection may attend, intervene or give evidence in any proceeding under this subsection.

(8) *APPEAL.* An appeal by a minor from an order of the trial court denying a petition under sub. (7) may be taken to the court of appeals as a matter of right under s. 808.03 (1) and is governed by s. 809.105.

History: 1991 a. 263.315; 1993 a. 112, 230, 446; 1995 a. 77, 275, 309; 2001 a. 16. 103

The essential holding of *Roe v. Wade* allowing abortion is upheld, but various state restrictions on abortion are permissible. *Planned Parenthood v. Casey*, 505 U.S. 833, 120 L. Ed. 2d 674 (1992).

SUBCHAPTER VII

PERMANENCY PLANNING; RECORDS

48.38 Permanency planning. (1) DEFINITIONS In this section:

(a) "Agency" means the department, a county department or a licensed child welfare agency.

(am) "Independent agency" means a private, nonprofit organization, but does not include a licensed child welfare agency that

is authorized to prepare permanency plans or that is assigned the primary responsibility of providing services under a permanency plan.

(b) "Permanency plan" means a plan designed to ensure that a child is reunified with his or her family whenever appropriate, or that the child quickly attains a placement or home providing long-term stability.

(2) PERMANENCY PLAN REQUIRED. Except as provided in sub. (3), for each child living in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to the child under s. 48.355 shall prepare a written permanency plan, if any of the following conditions exists, and, for each child living in the home of a relative other than a parent, that agency shall prepare a written permanency plan, if any of the conditions specified in pars. (a) to (e) exists:

(a) The child is being held in physical custody under s. 48.207, 48.208 or 48.209.

(b) The child is in the legal custody of the agency.

(c) The child is under the supervision of an agency under s. 48.64 (2), under a consent decree under s. 48.32 (1) (b), or under a court order under s. 48.355.

(d) The child was placed under a voluntary agreement between the agency and the child's parent under s. 48.63 (1) or (5) (b).

(e) The child is under the guardianship of the agency.

(f) The child's care would be paid for under s. 49.19 but for s. 49.19 (20).

(g) The child's parent is placed in a foster home, treatment foster home, group home, residential care center for children and youth, secure detention facility, or shelter care facility and the child is residing with that parent.

(3) TIME. Subject to s. 48.355 (2d) (c) 1., the agency shall file the permanency plan with the court within 60 days after the date on which the child was first removed from his or her home, except that if the child is held for less than 60 days in a secure detention facility, juvenile portion of a county jail, or a shelter care facility, no permanency plan is required if the child is returned to his or her home within that period.

(4) CONTENTS OF PLAN. The permanency plan shall include all of the following:

(ag) The name, address, and telephone number of the child's parent, guardian, and legal custodian.

(am) The date on which the child was removed from his or her home and the date on which the child was placed in out-of-home care.

(ar) A description of the services offered and any services provided in an effort to prevent the removal of the child from his or her home, while assuring that the health and safety of the child are the paramount concerns, and to achieve the goal of the permanency plan, except that the permanency plan is not required to include a description of the services offered or provided with respect to a parent of the child to prevent the removal of the child from the home or to achieve the permanency plan goal of returning the child safely to his or her home if any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies to that parent.

(b) The basis for the decision to hold the child in custody or to place the child outside of his or her home.

(bm) A statement as to the availability of a safe and appropriate placement with a fit and willing relative of the child and, if a decision is made not to place the child with an available relative, a statement as to why placement with the relative is not safe or appropriate.

(c) The location and type of facility in which the child is currently held or placed, and the location and type of facility in which the child will be placed.

(d) If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate or documentation that placement more than 60 miles from the child's home is in the child's best interests. The placement of a child in a licensed foster home or a licensed treatment foster home more than 60 miles from the child's home is presumed to be in the best interests of the child if documentation is provided which shows all of the following:

1. That the placement is made pursuant to a voluntary agreement under s. 48.63 (1).

2. That the voluntary agreement provides that the child may be placed more than 60 miles from the child's home.

3. That the placement is made to facilitate the anticipated adoptive placement of the child under s. 48.833 or 48.837.

(dg) Information about the child's education, including all of the following:

1. The name and address of the school in which the child is or was most recently enrolled.

2. Any special education programs in which the child is or was previously enrolled.

3. The grade level in which the child is or was most recently enrolled and all information that is available concerning the child's grade level performance.

4. A summary of all available education records relating to the child that are relevant to any education goals included in the education services plan prepared under s. 48.33 (1) (e).

(dm) If as a result of the placement the child has been or will be transferred from the school in which the child is or most recently was enrolled, documentation that a placement that would maintain the child in that school is either unavailable or inappropriate or that a placement that would result in the child's transfer to another school would be in the child's best interests.

(dr) Medical information relating to the child, including all of the following:

1. The names and addresses of the child's physician, dentist, and any other health care provider that is or was previously providing health care services to the child.

2. The child's immunization record, including the name and date of each immunization administered to the child.

3. Any known medical condition for which the child is receiving medical care or treatment and any known serious medical condition for which the child has previously received medical care or treatment.

4. The name, purpose, and dosage of any medication that is being administered to the child and the name of any medication that causes the child to suffer an allergic or other negative reaction.

(e) A plan for ensuring the safety and appropriateness of the placement and a description of the services provided to meet the needs of the child and family, including a discussion of services that have been investigated and considered and are not available or likely to become available within a reasonable time to meet the needs of the child or, if available, why such services are not safe or appropriate.

(f) A description of the services that will be provided to the child, the child's family, and the child's foster parent, the child's treatment foster parent, the operator of the facility where the child is living, or the relative with whom the child is living to carry out the dispositional order, including services planned to accomplish all of the following:

1. Ensure proper care and treatment of the child and promote safety and stability in the placement.

2. Meet the child's physical, emotional, social, educational and vocational needs.

3. Improve the conditions of the parents' home to facilitate the safe return of the child to his or her home, or, if appropriate, obtain an alternative permanent placement for the child.

(fg) The goal of the permanency plan or, if the agency is making concurrent reasonable efforts under s. 48.355 (2b), the goals of the permanency plan. If a goal of the permanency plan is any goal other than return of the child to his or her home, the permanency plan shall include the rationale for deciding on that goal. If a goal of the permanency plan is an alternative permanent placement under subd. 5., the permanency plan shall document a compelling reason why it would not be in the best interest of the child to pursue a goal specified in subds. 1. to 4. The agency shall determine one or more of the following goals to be the goal or goals of a child's permanency plan:

1. Return of the child to the child's home.
2. Placement of the child for adoption.
3. Placement of the child with a guardian.
4. Permanent placement of the child with a fit and willing relative.
5. Some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.

(fm) If the goal of the permanency plan is to place the child for adoption, with a guardian, with a fit and willing relative, or in some other alternative permanent placement, the efforts made to achieve that goal.

(g) The conditions, if any, upon which the child will be returned safely to his or her home, including any changes required in the parents' conduct, the child's conduct or the nature of the home.

(h) If the child is 15 years of age or over, a description of the programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living. The description shall include all of the following:

1. The anticipated age at which the child will be discharged from out-of-home care.
2. The anticipated amount of time available in which to prepare the child for the transition from out-of-home care to independent living.
3. The anticipated location and living situation of the child on discharge from out-of-home care.
4. A description of the assessment processes, tools, and methods that have been or will be used to determine the programs and services that are or will be provided to assist the child in preparing for the transition from out-of-home care to independent living.
5. The rationale for each program or service that is or will be provided to assist the child in preparing for the transition from out-of-home care to independent living, the time frames for delivering those programs or services, and the intended outcome of those programs or services.

(5) PLAN REVIEW. (a) Except as provided in s. 48.63 (5) (d), the court or a panel appointed under par. (ag) shall review the permanency plan in the manner provided in this subsection not later than 6 months after the date on which the child was first removed from his or her home and every 6 months after a previous review under this subsection for as long as the child is placed outside the home, except that for the review that is required to be conducted not later than 12 months after the child was first removed from his or her home and the reviews that are required to be conducted every 12 months after that review the court shall hold a hearing under sub. (5m) to review the permanency plan, which hearing may be instead of or in addition to the review under this subsection.

(ag) If the court elects not to review the permanency plan, the court shall appoint a panel to review the permanency plan. The panel shall consist of 3 persons who are either designated by an independent agency that has been approved by the chief judge of the judicial administrative district or designated by the agency that prepared the permanency plan. A voting majority of persons on each panel shall be persons who are not employed by the agency that prepared the permanency plan and who are not responsible for

providing services to the child or the parents of the child whose permanency plan is the subject of the review.

(am) The court may appoint an independent agency to designate a panel to conduct a permanency plan review under par. (a). If the court in a county having a population of less than 500,000 appoints an independent agency under this paragraph, the county department of the county of the court shall authorize and contract for the purchase of services from the independent agency. If the court in a county having a population of 500,000 or more appoints an independent agency under this paragraph: the department shall authorize and contract for the purchase of services from the independent agency.

(b) The court or the agency shall notify the parents of the child, the child, if he or she is 12 years of age or older, and the child's foster parent, the child's treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living of the date, time, and place of the review, of the issues to be determined as part of the review, and of the fact that they may have an opportunity to be heard at the review by submitting written comments not less than 10 working days before the review or by participating at the review. The court or agency shall notify the person representing the interests of the public, the child's counsel, the child's guardian ad litem, and the child's court-appointed special advocate of the date of the review, of the issues to be determined as part of the review, and of the fact that they may submit written comments not less than 10 working days before the review. The notices under this paragraph shall be provided in writing not less than 30 days before the review and copies of the notices shall be filed in the child's case record.

(c) The court or the panel shall determine each of the following:

1. The continuing necessity for and the safety and appropriateness of the placement.
2. The extent of compliance with the permanency plan by the agency and any other service providers, the child's parents, the child and the child's guardian, if any.
3. The extent of any efforts to involve appropriate service providers in addition to the agency's staff in planning to meet the special needs of the child and the child's parents.
4. The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child.
5. The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement.
6. If the child has been placed outside of his or her home, as described in s. 48.365 (1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan and the circumstances which prevent the child from any of the following:
 - a. Being returned safely to his or her home.
 - b. Having a petition for the involuntary termination of parental rights filed on behalf of the child.
 - c. Being placed for adoption.
 - cg. Being placed with a guardian.
 - cm. Being placed in the home of a fit and willing relative of the child.
 - d. Being placed in some other alternative permanent placement, including sustaining care, independent living, or long-term foster care.
7. Whether reasonable efforts were made by the agency to achieve the goal of the permanency plan, unless return of the child to the home is the goal of the permanency plan and any of the circumstances specified in s. 48.355 (2d) (b) 1. to 5. applies.

(d) Notwithstanding s. 48.78 (2) (a), the agency that prepared the permanency plan shall, at least 5 days before a review by a review panel, provide to each person appointed to the review panel, the person representing the interests of the public, the child's counsel, the child's guardian ad litem and the child's court-appointed special advocate a copy of the permanency plan and any written comments submitted under par. (b). Notwithstanding s. 48.78 (2) (a), a person appointed to a review panel, the person representing the interests of the public, the child's counsel, the child's guardian ad litem and the child's court-appointed special advocate may have access to any other records concerning the child for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) Within 30 days, the agency shall prepare a written summary of the determinations under par. (c) and shall provide a copy to the court that entered the order, the child or the child's counsel or guardian ad litem, the person representing the interests of the public, the child's parent or guardian, the child's court-appointed special advocate and the child's foster parent, the child's treatment foster parent or the operator of the facility where the child is living.

(f) If the summary prepared under par. (e) indicates that the review panel made recommendations that conflict with the court order or that provide for additional services not specified in the court order, the agency primarily responsible for providing services to the child shall request a revision of the court order.

(5m) PERMANENCY PLAN HEARING. (a) The court shall hold a hearing to review the permanency plan and to make the determinations specified in sub. (5) (c) no later than 12 months after the date on which the child was first removed from the home and every 12 months after a previous hearing under this subsection for as long as the child is placed outside the home.

(b) Not less than 30 days before the date of the hearing, the court shall notify the child; the child's parent, guardian, and legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; the child's counsel, the child's guardian ad litem, and the child's court-appointed special advocate; the agency that prepared the permanency plan; and the person representing the interests of the public of the date, time, and place of the hearing.

(c) Any person who is provided notice of the hearing may have an opportunity to be heard at the hearing by submitting written comments relevant to the determinations specified in sub. (5) (c) not less than 10 working days before the date of the hearing or by participating at the hearing. A foster parent, treatment foster parent, operator of a facility in which a child is living, or relative with whom a child is living who receives notice of a hearing under par. (b) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(d) At least 5 days before the date of the hearing the agency that prepared the permanency plan shall provide a copy of the permanency plan and any written comments submitted under par. (c) to the court, to the child's parent, guardian, and legal custodian, to the person representing the interests of the public, to the child's counsel or guardian ad litem, and to the child's court-appointed special advocate. Notwithstanding s. 48.78 (2) (a), the person representing the interests of the public, the child's counsel or guardian ad litem, and the child's court-appointed special advocate may have access to any other records concerning the child for the purpose of participating in the review. A person permitted access to a child's records under this paragraph may not disclose any information from the records to any other person.

(e) After the hearing, the court shall make written findings of fact and conclusions of law relating to the determinations under sub. (5) (c) and shall provide a copy of those findings of fact and conclusions of law to the child; the child's parent, guardian, and

legal custodian; the child's foster parent or treatment foster parent, the operator of the facility in which the child is living, or the relative with whom the child is living; the child's court-appointed special advocate; the agency that prepared the permanency plan; and the person representing the interests of the public. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on circumstances specific to the child and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without documenting or referencing that specific information in the findings of fact and conclusions of law or amended findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(f) If the findings of fact and conclusions of law under par. (e) conflict with the child's dispositional order or provide for any additional services not specified in the dispositional order, the court shall revise the dispositional order under s. 48.363 or order a change in placement under s. 48.357, as appropriate.

(6) RULES. The department shall promulgate rules establishing the following:

(a) Procedures for conducting permanency plan reviews.

(b) Requirements for training review panels.

(c) Standards for reasonable efforts to prevent placement of children outside of their homes, while assuring that their health and safety are the paramount concerns, and to make it possible for children to return safely to their homes if they have been placed outside of their homes.

(d) The format for permanency plans and review panel reports.

(e) Standards and guidelines for decisions regarding the placement of children.

History: 1983 a. 399; 1985 a. 70 ss. 1, 10; 1985 a. 176; 1985 a. 292 s. 3; 1985 a. 332; 1987 a. 383; 1989 a. 31, 86, 107; 1993 a. 377, 385, 395, 446, 491; 1995 a. 27 ss. 2474 to 2378, 9126 (19); 1995 a. 77, 143.275; 1997 a. 27, 35, 104.237; 1999 a. 149; 2001 a. 2, 59.69, 109.

NOTE: 1993 Wis. Act 395, which affects subs. (5) and (5m), contains extensive explanatory notes.

The time limits in sub. (3) are not a prerequisite to trial court jurisdiction. Interest of Scott Y. 175 Wis. 2d 322, 499 N.W.2d 219 (Ct. App. 1993).

48.396 Records. (1) Law enforcement officers' records of children shall be kept separate from records of adults. Law enforcement officers' records of the adult expectant mothers of unborn children shall be kept separate from records of other adults. Law enforcement officers' records of children and the adult expectant mothers of unborn children shall not be open to inspection or their contents disclosed except under sub. (1b), (1d) or (5) or s. 48.293 or by order of the court. This subsection does not apply to the representatives of newspapers or other reporters of news who wish to obtain information for the purpose of reporting news without revealing the identity of the child or adult expectant mother involved, to the confidential exchange of information between the police and officials of the school attended by the child or other law enforcement or social welfare agencies or to children 10 years of age or older who are subject to the jurisdiction of the court of criminal jurisdiction. A public school official who obtains information under this subsection shall keep the information confidential as required under s. 118.125 and a private school official who obtains information under this subsection shall keep the information confidential in the same manner as is required of a public school official under s. 118.125. A law enforcement agency that obtains information under this subsection shall keep the information confidential as required under this subsection and s. 938.396 (1). A social welfare agency that obtains information under this subsection shall keep the information confidential as required under ss. 48.78 and 938.78.

(1b) If requested by the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report, or if requested by the child, if 14 years of age or over, a law enforce-

ment agency may, subject to official agency policy, provide to the parent, guardian, legal custodian or child a copy of that report. If requested by the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, if requested by an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, or if requested by an unborn child through the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, provide to the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem a copy of that report.

(1d) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a law enforcement officer's report or upon the written permission of the child, if 14 years of age or over, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or child in the written permission. Upon the written permission of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a law enforcement officer's report, or of an expectant mother of an unborn child who is the subject of a law enforcement officer's report, if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, a law enforcement agency may, subject to official agency policy, make available to the person named in the permission any reports specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child by the unborn child's guardian ad litem in the written permission.

(2) (a) Records of the court assigned to exercise jurisdiction under this chapter and ch. 938 and of courts exercising jurisdiction under s. 48.16 shall be entered in books or deposited in files kept for that purpose only. They shall not be open to inspection or their contents disclosed except by order of the court assigned to exercise jurisdiction under this chapter and ch. 938 or as permitted under this section or s. 48.375 (7) (e).

(ag) Upon request of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon request of the child, if 14 years of age or over, the court shall open for inspection by the parent, guardian, legal custodian or child the records of the court relating to that child, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian or child would result in imminent danger to anyone.

(aj) Upon request of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), upon request of an expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), if 14 years of age or over, or upon request of an unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem the records of the court relating to that expectant mother, unless the court finds, after due notice and hearing, that inspection of those records by the parent, guardian, legal custodian, expectant mother or unborn child by the unborn child's guardian ad litem would result in imminent danger to anyone.

(am) Upon the written permission of the parent, guardian or legal custodian of a child who is the subject of a record of a court specified in par. (a), or upon the written permission of the child, if 14 years of age or over, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or child in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(ap) Upon the written permission of the parent, guardian or legal custodian of a child expectant mother of an unborn child who is the subject of a record of a court specified in par. (a), or of an expectant mother of an unborn child who is the subject of a record

of a court specified in par. (a), if 14 years of age or over, and of the unborn child by the unborn child's guardian ad litem, the court shall open for inspection by the person named in the permission any records specifically identified by the parent, guardian, legal custodian or expectant mother, and unborn child by the unborn child's guardian ad litem in the written permission, unless the court finds, after due notice and hearing, that inspection of those records by the person named in the permission would result in imminent danger to anyone.

(b) Upon request of the department or a federal agency to review court records for the purpose of monitoring and conducting periodic evaluations of activities as required by and implemented under 45 CFR 1355, 1356 and 1357, the court shall open those records for inspection by authorized representatives of the department or federal agency.

(dm) Upon request of a court having jurisdiction over actions affecting the family, an attorney responsible for support enforcement under s. 59.53 (6) (a) or a party to a paternity proceeding under ss. 767.45 to 767.60, the party's attorney or the guardian ad litem for the child who is the subject of that proceeding to review or be provided with information from the records of the court assigned to exercise jurisdiction under this chapter and ch. 938 relating to the paternity of a child for the purpose of determining the paternity of the child or for the purpose of rebutting the presumption of paternity under s. 891.405 or 891.41 (1), the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by the requester its records relating to the paternity of the child or disclose to the requester those records.

(dr) Upon request of the department of corrections or any other person preparing a presentence investigation under s. 972.15 to review court records for the purpose of preparing the presentence investigation, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(f) Upon request of the department of corrections to review court records for the purpose of obtaining information concerning a child required to register under s. 301.45, the court shall open for inspection by authorized representatives of the department of corrections the records of the court relating to any child who has been found in need of protection or services for an offense specified in s. 301.45 (1g) (a). The department of corrections may disclose information that it obtains under this paragraph as provided under s. 301.46.

(g) Upon request of any other court assigned to exercise jurisdiction under this chapter and ch. 938, a district attorney or corporation counsel to review court records for the purpose of any proceeding in that other court, the court shall open for inspection by any authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(h) Upon request of the court having jurisdiction over an action affecting the family or of an attorney for a party or a guardian ad litem in an action affecting the family to review court records for the purpose of considering the custody of a child, the court assigned to exercise jurisdiction under this chapter and ch. 938 shall open for inspection by an authorized representative of the requester the records of the court relating to any child who has been the subject of a proceeding under this chapter.

(5) (a) Any person who is denied access to a record under sub. (1), (1b) or (1d) may petition the court to order the disclosure of the records governed by the applicable subsection. The petition shall be in writing and shall describe as specifically as possible all of the following:

1. The type of information sought.
2. The reason the information is being sought.
3. The basis for the petitioner's belief that the information is contained in the records.

4. The relevance of the information sought to the petitioner's reason for seeking the information.

5. The petitioner's efforts to obtain the information from other sources.

(b) The court shall notify the child, the child's counsel, the child's parents, appropriate law enforcement agencies and, if the child is an expectant mother of an unborn child under s. 48.133, the unborn child by the unborn child's guardian ad litem, or shall notify the adult expectant mother, the unborn child by the unborn child's guardian ad litem and appropriate law enforcement agencies, in writing of the petition. If any person notified objects to the disclosure, the court may hold a hearing to take evidence relating to the petitioner's need for the disclosure.

(c) The court shall make an inspection, which may be in camera, of the records of the child or expectant mother. If the court determines that the information sought is for good cause and that it cannot be obtained with reasonable effort from other sources, the court shall then determine whether the petitioner's need for the information outweighs society's interest in protecting its confidentiality. In making that determination, the court shall balance the interest of the petitioner in obtaining access to the record against the interest of the child or expectant mother in avoiding the stigma that might result from disclosure.

(d) If the court determines that disclosure is warranted, it shall order the disclosure of only as much information as is necessary to meet the petitioner's need for the information.

(e) The court shall record the reasons for its decision to disclose or not to disclose the records of the child or expectant mother. All records related to a decision under this subsection are confidential.

History: 1971 c. 278; 1977 c. 354 s. 37; 1977 c. 449; Stats. 1977 s. 48.396; 1979 c. 300; 1979 c. 333 s. 5; 1983 a. 74 s. 32; 1983 a. 487.538; 1985 a. 311.332; 1987 a. 27, 180.403; 1989 a. 31, 107, 145; 1991 a. 39.263; 1993 a. 98, 195.228, 334.479, 491; 1995 a. 27 ss. 2479 to 2480m, 9126 (19); 1995 a. 77, 173, 275, 352, 440, 448; 1997 a. 35, 80, 191.205, 252.292; 1999 a. 32, 89.

In the interest of fostering fair and efficient administration of justice, a circuit court has the power to order disclosure of police records. State ex rel. Herget v. Waukesha Co. Cir. Ct. 84 Wis. 2d 435, 267 N.W.2d 309 (1978).

Section 967.06 gives the public defender the right to receive juvenile records of indigent clients notwithstanding s. 48.396 (2). State ex rel. S. M. O. 110 Wis. 2d 447, 329 N.W.2d 275 (Ct. App. 1982).

In determining whether to release Juvenile court records, the child's best interests are paramount. The child's interests must be weighed against the need of the party seeking the information. The child whose confidentiality interests are at stake must be represented. State v. Bellows, 218 Wis. 2d 614.582 N.W.2d 53 (Ct. App. 1998).

Juvenile officers are not required to provide information concerning juveniles to school officials. A school does not violate s. 1) by using information obtained from an officer to take disciplinary actions against a student as long as the school does not reveal the reason for its action. 69 Atty. Gen. 179.

A sheriff's department may, when evaluating an individual for an employment position, consider information in its possession concerning the individual's juvenile record. 67 Atty. Gen. 327 is overruled. 79 Atty. Gen. 89.

SUBCHAPTER VIII

TERMINATION OF PARENTAL RIGHTS

48.40 Definitions. In this subchapter:

(1) Except as otherwise provided, "agency" means the department, a county department or a licensed child welfare agency.

(1m) "Kinship care relative" means a person receiving payments under s. 48.57 (3m) (am) for providing care and maintenance for a child.

(2) "Termination of parental rights" means that, pursuant to a court order, all rights, powers, privileges, immunities, duties and obligations existing between parent and child are permanently severed.

History: 1979 c. 330; 1985 a. 176; 1995 a. 289.

Parents whose rights have been terminated do not inherit from a child; the child's siblings, whether parental rights as to them have been terminated or not, are the child's heirs. Estate of Pamanet, 46 Wis. 2d 514, 175 N.W.2d 233 (1970).

Terminating parental rights. Hayes and Ogorchok. Wis. Law. June 1989.

48.41 Voluntary consent to termination of parental rights. (1) The court may terminate the parental rights of a par-

ent after the parent has given his or her consent as specified in this section. When such voluntary consent is given as provided in this section, the judge may proceed immediately to a disposition of the matter after considering the standard and factors specified in s. 48.426.

(2) The court may accept a voluntary consent to termination of parental rights only as follows:

(a) The parent appears personally at the hearing and gives his or her consent to the termination of his or her parental rights. The judge may accept the consent only after the judge has explained the effect of termination of parental rights and has questioned the parent, or has permitted an attorney who represents any of the parties to question the parent, and is satisfied that the consent is informed and voluntary.

(b) If the court finds that it would be difficult or impossible for the parent to appear in person at the hearing, the court may accept the written consent of the parent given before an embassy or consul official, a military judge or a judge of any court of record in another county or state or a foreign jurisdiction. This written consent shall be accompanied by the signed findings of the embassy or consul official or judge who accepted the parent's consent. These findings shall recite that the embassy or consul official or judge or an attorney who represents any of the parties questioned the parent and found that the consent was informed and voluntary before the embassy or consul official or judge accepted the consent of the parent.

(c) A person who may be, but who has not been adjudicated as, the father of a nonmarital child may consent to the termination of any parental rights that he may have as provided in par. (a) or (b) or by signing a written, notarized statement which recites that he has been informed of and understands the effect of an order to terminate parental rights and that he voluntarily disclaims any rights that he may have to the child, including the right to notice of proceedings under this subchapter.

(d) If the proceeding to terminate parental rights is held prior to an adoption proceeding in which the petitioner is the child's stepparent, or in which the child's birth parent is a resident of a foreign jurisdiction, the child's birth parent may consent to the termination of any parental rights that he or she may have as provided in par. (a) or (b) or by filing with the court an affidavit witnessed by 2 persons stating that he or she has been informed of and understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims all rights to the child, including the right to notice of proceedings under this subchapter.

(3) If in any proceeding to terminate parental rights voluntarily a guardian ad litem has reason to doubt the capacity of a parent to give informed and voluntary consent to the termination, he or she shall so inform the court. The court shall then inquire into the capacity of that parent in any appropriate way and shall make a finding as to whether or not the parent is capable of giving informed and voluntary consent to the termination. If the court finds that the parent is incapable of knowingly and voluntarily consenting to the termination of parental rights, it shall dismiss the proceedings without prejudice. That dismissal shall not preclude an involuntary termination of the parent's rights under s. 48.415.

History: 1979 c. 330; 1981 c. 384; 1983 a. 352.447; 1987 a. 383; Sup. Ct. Order. 151 Wis. 2d xxv (1989); 1999 a. 83.

Judicial Council Note, 1990: Sub. (3) is repealed and recreated because the so-called substituted judgment permitted therein is bad public policy. New sub. 13) deals with the situation in which there is reason to doubt the competency of a parent who wishes to consent to the termination of his or her parental rights. Any party or guardian ad litem with reason to doubt such competency is required to so inform the court. The court must then make an inquiry in whatever way is appropriate. This may mean a simple discussion with the person, an examination, the appointment of experts to examine the person, a hearing or whatever seems proper in the discretion of the court. If the court finds the person incapable of making an informed and voluntary termination of parental rights, the court must dismiss the proceeding. If appropriate, an involuntary proceeding may then be commenced. A finding that the parent is competent does not obviate the need for a record that he or she has in fact given informed and voluntary consent prior to entry of a termination order. In Interest of D.L.S., 112 Wis. 2d 180, 196-97 (1983). [Re Ordereffective Jan. 1, 1990]

The minimum information that must be found on the record to support a finding that a minor parent's consent was voluntary and informed is set forth. In Interest of D.L.S., 112 Wis. 2d 180, 332 N.W.2d 295 (1983).

48.415 Grounds for involuntary termination of parental rights. At the fact-finding hearing the court or jury may make a finding that grounds exist for the termination of parental rights. Grounds for termination of parental rights shall be one of the following:

(1) ABANDONMENT. (a) Abandonment, which, subject to par. (c), shall be established by proving any of the following:

1. That the child has been left without provision for the child's care or support, the petitioner has investigated the circumstances surrounding the matter and for 60 days the petitioner has been unable to find either parent.

1m. That the child has been left by the parent without provision for the child's care or support in a place or manner that exposes the child to substantial risk of great bodily harm, as defined in s. 939.22 (14), or death.

Ir. That a court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when the child was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state.

2. That the child has been placed, or continued in a placement, outside the parent's home by a court order containing the notice required by s. 48.356 (2) or 938.356 (2) and the parent has failed to visit or communicate with the child for a period of 3 months or longer.

3. The child has been left by the parent with any person, the parent knows or could discover the whereabouts of the child and the parent has failed to visit or communicate with the child for a period of 6 months or longer.

(b) Incidental contact between parent and child shall not preclude the court from finding that the parent has failed to visit or communicate with the child under par. (a) 2. or 3. The time periods under par. (a) 2. or 3. shall not include any periods during which the parent has been prohibited by judicial order from visiting or communicating with the child.

(c) Abandonment is not established under par. (a) 2. or 3. if the parent proves all of the following by a preponderance of the evidence:

1. That the parent had good cause for having failed to visit with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

2. That the parent had good cause for having failed to communicate with the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

3. If the parent proves good cause under subd. 2., including good cause based on evidence that the child's age or condition would have rendered any communication with the child meaningless, that one of the following occurred:

a. The parent communicated about the child with the person or persons who had physical custody of the child during the time period specified in par. (a) 2. or 3., whichever is applicable, or, if par. (a) 2. is applicable, with the agency responsible for the care of the child during the time period specified in par. (a) 2.

b. The parent had good cause for having failed to communicate about the child with the person or persons who had physical custody of the child or the agency responsible for the care of the child throughout the time period specified in par. (a) 2. or 3., whichever is applicable.

(1m) RELINQUISHMENT. Relinquishment, which shall be established by proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the parent has relinquished custody of the child under s. 48.195 (1) when the child was 72 hours old or younger.

(2) CONTINUING NEED OF PROTECTION OR SERVICES. Continuing need of protection or services, which shall be established by proving any of the following:

(a) 1. That the child has been adjudged to be a child or an unborn child in need of protection or services and placed, or continued in a placement, outside his or her home pursuant to one or more court orders under s. 48.345, 48.347, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

2. a. In this subdivision, "reasonable effort" means an earnest and conscientious effort to take good faith steps to provide the services ordered by the court which takes into consideration the characteristics of the parent or child or of the expectant mother or child, the level of cooperation of the parent or expectant mother and other relevant circumstances of the case.

b. That the agency responsible for the care of the child and the family or of the unborn child and expectant mother has made a reasonable effort to provide the services ordered by the court.

3. That the child has been outside the home for a cumulative total period of 6 months or longer pursuant to such orders not including time spent outside the home as an unborn child; and that the parent has failed to meet the conditions established for the safe return of the child to the home and there is a substantial likelihood that the parent will not meet these conditions within the 12-month period following the fact-finding hearing under s. 48.424.

(am) 1. That on 3 or more occasions the child has been adjudicated to be in need of protection or services under s. 48.13 (3), (3m), (10) or (10m) and, in connection with each of those adjudications, has been placed outside his or her home pursuant to a court order under s. 48.345 containing the notice required by s. 48.356 (2).

2. That the conditions that led to the child's placement outside his or her home under each order specified in subd. 1. were caused by the parent.

(3) CONTINUING PARENTAL DISABILITY. Continuing parental disability, which shall be established by proving that:

(a) The parent is presently, and for a cumulative total period of at least 2 years within the 5 years immediately prior to the filing of the petition has been, an inpatient at one or more hospitals as defined in s. 50.33 (2) (a), (b) or (c), licensed treatment facilities as defined in s. 51.01 (2) or state treatment facilities as defined in s. 51.01 (15) on account of mental illness as defined in s. 51.01 (13) (a) or (b) or developmental disability as defined in s. 55.01 (2) or (5);

(b) The condition of the parent is likely to continue indefinitely; and

(c) The child is not being provided with adequate care by a relative who has legal custody of the child, or by a parent or a guardian.

(4) CONTINUING DENIAL OF PERIODS OF PHYSICAL PLACEMENT OR VISITATION. Continuing denial of periods of physical placement or visitation, which shall be established by proving all of the following:

(a) That the parent has been denied periods of physical placement by court order in an action affecting the family or has been denied visitation under an order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 containing the notice required by s. 48.356 (2) or 938.356 (2).

(b) That at least one year has elapsed since the order denying periods of physical placement or visitation was issued and the court has not subsequently modified its order so as to permit periods of physical placement or visitation.

(5) CHILD ABUSE. Child abuse, which shall be established by proving that the parent has exhibited a pattern of physically or sexually abusive behavior which is a substantial threat to the

health of the child who is the subject of the petition and proving either of the following:

(a) That the parent has caused death or injury to a child or children resulting in a felony conviction.

(b) That a child has previously been removed from the parent's home pursuant to a court order under s. 48.345 after an adjudication that the child is in need of protection or services under s. 48.13 (3) or (3m).

(6) FAILURE TO ASSUME PARENTAL RESPONSIBILITY. (a) Failure to assume parental responsibility, which shall be established by proving that the parent or the person or persons who may be the parent of the child have never had a substantial parental relationship with the child.

(b) In this subsection, "substantial parental relationship" means the acceptance and exercise of significant responsibility for the daily supervision, education, protection and care of the child. In evaluating whether the person has had a substantial parental relationship with the child, the court may consider such factors, including, but not limited to, whether the person has ever expressed concern for or interest in the support, care or well-being of the child, whether the person has neglected or refused to provide care or support for the child and whether, with respect to a person who is or may be the father of the child, the person has ever expressed concern for or interest in the support, care or well-being of the mother during her pregnancy.

(7) INCESTUOUS PARENTHOOD. Incestuous parenthood, which shall be established by proving that the person whose parental rights are sought to be terminated is also related, either by blood or adoption, to the child's other parent in a degree of kinship closer than 2nd cousin.

(8) HOMICIDE OR SOLICITATION TO COMMIT HOMICIDE OF PARENT. Homicide or solicitation to commit homicide of a parent, which shall be established by proving that a parent of the child has been a victim of first-degree intentional homicide in violation of s. 940.01, first-degree reckless homicide in violation of s. 940.02 or 2nd-degree intentional homicide in violation of s. 940.05 or a crime under federal law or the law of any other state that is comparable to any of those crimes, or has been the intended victim of a solicitation to commit first-degree intentional homicide in violation of s. 939.30 or a crime under federal law or the law of any other state that is comparable to that crime, and that the person whose parental rights are sought to be terminated has been convicted of that intentional or reckless homicide, solicitation or crime under federal law or the law of any other state as evidenced by a final judgment of conviction.

(9) PARENTHOOD AS A RESULT OF SEXUAL ASSAULT. (a) Parenthood as a result of sexual assault, which shall be established by proving that the child was conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025. Conception as a result of sexual assault as specified in this paragraph may be proved by a final judgment of conviction or other evidence produced at a fact-finding hearing under s. 48.424 indicating that the person who may be the father of the child committed, during a possible time of conception, a sexual assault as specified in this paragraph against the mother of the child.

(b) If the conviction or other evidence specified in par. (a) indicates that the child was conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2), the mother of the child may be heard on her desire for the termination of the father's parental rights.

(9m) COMMISSION OF A SERIOUS FELONY AGAINST ONE OF THE PERSON'S CHILDREN. (a) Commission of a serious felony against one of the person's children, which shall be established by proving that a child of the person whose parental rights are sought to be terminated was the victim of a serious felony and that the person whose parental rights are sought to be terminated has been convicted of that serious felony as evidenced by a final judgment of conviction.

(b) In this subsection, "serious felony" means any of the following:

1. The commission of the aiding or abetting of, or the solicitation, conspiracy or attempt to commit, a violation of s. 940.01, 940.02, 940.03 or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03 or 940.05 if committed in this state.

2. The commission of a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 if committed in this state.

NOTE: Subd. 2 is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:

2. The commission of a violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (3), (4) or (5), 940.225 (1) or (2), 948.025, 948.03 (2) (a) or (3) (a), 948.05, 948.06 or 948.08 if committed in this state.

3. The commission of a violation of s. 948.21 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 948.21 if committed in this state, that resulted in the death of the victim.

(10) PRIOR INVOLUNTARY TERMINATION OF PARENTAL RIGHTS TO ANOTHER CHILD. Prior involuntary termination of parental rights to another child, which shall be established by proving all of the following:

(a) That the child who is the subject of the petition has been adjudged to be in need of protection or services under s. 48.13 (2), (3) or (10).

(b) That, within 3 years prior to the date the court adjudged the child who is the subject of the petition to be in need of protection or services as specified in par. (a), a court has ordered the termination of parental rights with respect to another child of the person whose parental rights are sought to be terminated on one or more of the grounds specified in this section.

History: 1979 c. 330; 1983 a. 189 s. 329 (5); 1983 a. 326; 1983 a. 447 ss. 8, 67; 1983 a. 488, 538; 1987 a. 355, 383; 1989 a. 86; 1993 a. 235, 395; 1995 a. 77, 108, 225, 275; 1997 a. 35, 50, 237, 292, 294; 1999 a. 9, 32; 2001 a. 2, 109.

Consent by the mother subsequent to the birth of the child to termination of her parental rights in its best interests so that the child might be placed for adoption constituted an abandonment, and although she was permitted to withdraw that consent by a previous decision of the supreme court, the best interests of the child require modification of the court order to effect a termination of her parental rights. *Lewis v. Lutheran Social Services*, 68 Wis. 2d 36, 227 N.W.2d 643 (3975).

A termination order was not supported by sufficient findings when the findings merely repeated statutory language and made no determination of the best interests of the child. *Termination of Parental Rights to T. R. M.* 100 Wis. 2d 681, 303 N.W.2d 581 (1981).

A parent has constitutionally protected rights to the care, custody, and management of a child. *In Interest of J. L. W.* 102 Wis. 2d 118, 306 N.W.2d 46 (1981).

The dismissal of termination proceedings on grounds of abandonment because only 2 of 6 dispositional orders contained statutory warnings was inappropriate. The warning is only required in one order. *In Interest of K.K.* 162 Wis. 2d 431, 469 N.W.2d 881 (Ct. App. 1991).

The abandonment period under sub. (1) (a) 3. need not immediately precede filing of the petition. If abandonment is found, termination is still discretionary. *In Interest of T.P.S.* 168 Wis. 2d 259, 483 N.W.2d 591 (Ct. App. 1992).

While the CHIPS judge must notify the parents of possible termination grounds in the written dispositional order and repeat that information orally to any parent present in court, proof that the oral notice was given is not required in later termination proceedings under sub. (2) (a). *In Interest of D.P.* 170 Wis. 1d 313, 488 N.W.2d 133 (Ct. App. 1992).

A developmentally disabled father's allegation that the county, in violation of the Americans with Disabilities Act, did not take into account his disability in attempting to provide court ordered services was not a basis to attack a termination proceeding. The ADA did not place an added burden on the county to meet the requirements of sub. (2) (b). *In Interest of Torrence P.* 187 Wis. 2d 10, 522 N.W.2d 243 (Ct. App. 1994).

A child "left with" another person under sub. (1) (a) 3. may have been actively placed with the other person by the parent or allowed to live with the other person with the parent's knowledge. *In Interest of Christopher D.* 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

"Disassociated" under sub. (1) (c) is not unconstitutionally vague. *Disassociation* means more than "failure to visit or communicate" under sub. (1) (a). *In Interest of Christopher D.* 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

The respondent in a TPR case has the right to meaningfully participate; whether physical presence is required must be determined on a case by case basis. *Telephone*

participation may be adequate. Interest of Christopher D. 191 Wis. 2d 681, 530 N.W.2d 34 (Ct. App. 1995).

A showing of abandonment under sub. (1) (a) 3. creates a rebuttable presumption that imposes on the parent the burden of disproving abandonment under sub. (1) (c) by showing by a *preponderance* of the evidence that the parent has not disassociated himself or herself from the child. Odd S.-G v. Carolyn S.-G, 194 Wis. 2d 366, 533 N.W.2d 794 (1995).

Termination under sub. (8), due to a murder occurring prior to the adoption of sub. (8), did not violate the prohibition against *ex post facto* laws and did not violate due process, equal protection, or double jeopardy protections. Winnebago County DSS v. Darrell A. 194 Wis. 2d 628, 534 N.W.2d 907 (Ct. App. 1995).

It was a denial of due process to terminate parental rights on grounds substantially different from those that the parent was warned of under s. 48.356. State v. Patricia A.P. 195 Wis. 2d 855, 537 N.W.2d 47 (Ct. App. 1995).

Sub. (5) does not require an assessment of present and future behavior. The statute refers to past behavior that was a threat to the child's welfare. Jerry M. v. Dennis L. M. 198 Wis. 2d 10,542, N.W.2d 162 (Ct. App. 1995).

For all terminations under sub. (5), there must be a showing that the parent has exhibited a pattern of abusive behavior and a showing under par. (a) or (b). A "conviction" under par. (a) is a conviction after the appeal as of right has been exhausted. Monroe County v. Jennifer V. 200 Wis. 2d 678, 548 N.W.2d 837 (Ct. App. 1996).

Sub. (7) is a constitutional part of a statutory scheme that is narrowly tailored to meet the State's compelling interests. State v. Allen M. 214 Wis. 2d 302, 571 N.W.2d 872 (Ct. App. 1997).

Venue becomes an issue only in the event that it is contested. The county where a child "resides" is the county of domicile. The county where a child "is present" is the county where the child is present at the time a petition is filed. State v. Corey J. G. 215 Wis. 2d 394, 573 N.W.2d 845 (1998).

When a parent is prohibited from visitation, communication by phone and letter is not prohibited, and sub. (1) (b) does not apply. Periods in which there has been no contact whatsoever will be counted under sub. (1) (a) 2. and 3. Carol B. v. Timothy N. 228 Wis. 2d 695, 598 N.W.2d 924 (Ct. App. 1999).

The rules of civil procedure apply to termination of parental rights proceedings, and directed verdicts are permissible. Door County DHFS v. Scott S. 230 Wis. 2d 460, 602 N.W.2d 167 (Ct. App. 1999).

A guardian ad litem's comments regarding the best interests of the child were not improper. Only when the jury is instructed that it should consider the best interests of the child is there reversible error. Door County DHFS v. Scott S. 230 Wis. 2d 460, 602 N.W.2d 167 (Ct. App. 1999).

Prior to determining that grounds existed to terminate parental rights, the circuit court had the duty at the fact-finding hearing to find by clear and convincing evidence that all of the elements of s. 38.315 (1) (a) 3. had been satisfied. By entering a default judgment against the mother on the issue of abandonment without first taking evidence, the circuit court did not make the finding. The error was subject to a harmless error analysis. Evelyn C.R. v. Tykila S. 2001 WI 110, 246 Wis. 2d 1, 629 N.W.2d 768.

In a case under sub. (4), a parent's right to meaningfully participate in the termination proceeding includes the right to present evidence at the fact-finding hearing regarding efforts to meet the conditions for reestablishing visitation. It was error to restrict evidence to whether an order denying visitation had remained in effect for 1 year. State v. Frederick H. 2001 WI App 141, 246 Wis. 2d 215, 630 N.W.2d 734.

Events occurring prior to a CHIPS dispositional order are frequently relevant at a termination proceeding. A history of parental conduct may be relevant to predicting a parent's chances of complying with conditions in the future, despite failing to do so to date. La Crosse County Department of Human Services v. Tara P. 2002 WI App 84, 252 Wis. 2d 179, 643 N.W.2d 194.

In determining whether "there is a substantial likelihood" that a parent will not meet conditions for the return of his or her children, a parent's relevant character traits and patterns of behavior and the likelihood that any problematic traits or propensities have been or can be modified in order to assure the safety of the children must be considered. La Crosse County Department of Human Services v. Tara P. 2002 WI App 84, 252 Wis. 2d 179, 643 N.W.2d 194.

Process is constitutionally due a natural parent at a state-initiated parental rights termination proceeding. A 3-factor test is discussed. Santosky v. Kramer, 455 U.S. 745 (1982).

Adoption and termination proceedings in Wisconsin: Straining the wisdom of Solomon. Hayes and Morse, 66 MLR 439 (1983).

48.417 Petition for termination of parental rights; when required. (1) FILING OR JOINING IN PETITION; WHEN REQUIRED. Subject to sub. (2), an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 shall file a petition under s. 48.42 (1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42 (1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official shall join in the petition, if any of the following circumstances apply:

(a) The child has been placed outside of his or her home, as described in s. 48.365 (1) or 938.365 (1), for 15 of the most recent 22 months, not including any period during which the child was a runaway from the out-of-home placement or the first 6 months of any period during which the child was returned to his or her home for a trial home visit. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in by the last day of the 15th month, as described in this paragraph: for which the child was placed outside of his or her home.

(b) A court of competent jurisdiction has found under s. 48.13 (2) or under a law of any other state or a federal law that is comparable to s. 48.13 (2) that the child was abandoned when he or she was under one year of age or has found that the parent abandoned the child when the child was under one year of age in violation of s. 948.20 or in violation of the law of any other state or federal law, if that violation would be a violation of s. 948.20 if committed in this state. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court of competent jurisdiction found that the child was abandoned as described in this paragraph.

(c) A court of competent jurisdiction has found that the parent has committed, has aided or abetted the commission of, or has solicited, conspired, or attempted to commit, a violation of s. 940.01, 940.02, 940.03, or 940.05 or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.01, 940.02, 940.03, or 940.05 if committed in this state, and that the victim of that violation is a child of the parent. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court assigned to exercise jurisdiction under this chapter determines, based on a finding that a circumstance specified in this paragraph applies, that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

(d) A court of competent jurisdiction has found that the parent has committed a violation of s. 940.19 (3), 1999 stats., a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court assigned to exercise jurisdiction under this chapter determines, based on a finding that a circumstance specified in this paragraph applies, that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

NOTE: Par. (d) is shown as amended eff. 2-1-03 by 2001 Wis. Act 109. Prior to 2-1-03 it reads:

(d) A court of competent jurisdiction has found that the parent has committed a violation of s. 940.19 (2), (3), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) or a violation of the law of any other state or federal law, if that violation would be a violation of s. 940.19 (2), (3), (4), or (5), 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.03 (2) (a) or (3) (a) if committed in this state, and that the violation resulted in great bodily harm, as defined in s. 939.22 (14), or in substantial bodily harm, as defined in s. 939.22 (38), to the child or another child of the parent. If the circumstances specified in this paragraph apply, the petition shall be filed or joined in within 60 days after the date on which the court assigned to exercise jurisdiction under this chapter determines, based on a finding that a circumstance specified in this paragraph applies, that reasonable efforts to make it possible for the child to return safely to his or her home are not required.

(2) FILING OR JOINING IN PETITION; WHEN NOT REQUIRED. Notwithstanding that any of the circumstances specified in sub. (1) (a), (b), (c) or (d) may apply, an agency or the district attorney, corporation counsel or other appropriate official designated under s. 48.09 need not file a petition under s. 48.42 (1) to terminate the parental rights of a parent or the parents of a child, or, if a petition under s. 48.42 (1) to terminate those parental rights has already been filed, the agency, district attorney, corporation counsel or other appropriate official need not join in the petition, if any of the following circumstances apply:

(a) The child is being cared for by a fit and willing relative of the child.

(b) The child's permanency plan indicates and provides documentation that termination of parental rights to the child is not in the best interests of the child.

(c) The agency primarily responsible for providing services to the child and the family under a court order, if required under s.

48.355 (2) (b) 6. to make reasonable efforts to make it possible for the child to return safely to his or her home, has not provided to the family of the child, consistent with the time period in the child's permanency plan, the services necessary for the safe return of the child to his or her home.

(d) Grounds for an involuntary termination of parental rights under s. 48.415 do not exist.

(3) CONCURRENT ADOPTION EFFORTS REQUIRED. If a petition is filed or joined in as required under sub. (1), the agency primarily responsible for providing services to the child under a court order shall, during the pendency of the proceeding on the petition, work with the agency identified in the report under s. 48.425 (1) **(9)** that would be responsible for accomplishing the adoption of the child in processing and approving a qualified family for the adoption of the child.

(4) NOTICE TO DEPARTMENT. If a petition is filed or joined in as required under sub. (1), the person who filed or joined in the petition shall notify the department of that filing or joinder.

History: 1997 a. 237; 2001 a. 109.

48.42 Procedure. (1) PETITION. A proceeding for the termination of parental rights shall be initiated by petition which may be filed by the child's parent, an agency or a person authorized to file a petition under s. 48.25 or 48.835. The petition shall be entitled "In the interest of REDACTED (child's name), a person under the age of 18" and shall set forth with specificity:

(a) The name, birth date and address of the child.

(b) The names and addresses of the child's parent or parents, guardian and legal custodian.

(c) One of the following:

1. A statement that consent will be given to termination of parental rights as provided in s. 48.41.

2. A statement of the grounds for involuntary termination of parental rights under s. 48.415 and a statement of the facts and circumstances which the petitioner alleges establish these grounds.

(d) A statement of whether the child may be subject to the federal Indian child welfare act, 25 USC 1911 to 1963.

(1m) VISITATION OR CONTACT RIGHTS. (a) If the petition filed under sub. (1) includes a statement of the grounds for involuntary termination of parental rights under sub. (1) (c) 2., the petitioner may, at the time the petition under sub. (1) is filed, also petition the court for a temporary order and an injunction prohibiting the person whose parental rights are sought to be terminated from visiting or contacting the child who is the subject of the petition under sub. (1). Any petition under this paragraph shall allege facts sufficient to show that prohibiting visitation or contact would be in the best interests of the child.

(b) Subject to par. (e), the court may issue the temporary order ex parte or may refuse to issue the temporary order and hold a hearing on whether to issue an injunction. The temporary order is in effect until a hearing is held on the issuance of an injunction. The court shall hold a hearing on the issuance of an injunction on or before the date of the hearing on the petition to terminate parental rights under s. 48.422 (1).

(c) Notwithstanding any other order under s. 48.355 (3), the court, subject to par. (e), may grant an injunction prohibiting the respondent from visiting or contacting the child if the court determines that the prohibition would be in the best interests of the child. An injunction under this subsection is effective according to its terms but may not remain in effect beyond the date the court dismisses the petition for termination of parental rights under s. 48.427 (2) or issues an order terminating parental rights under s. 48.427 (3).

(d) A temporary order under par. (b) or an injunction under **par. (c)** suspends the portion of any order under s. 48.345, 48.363, 48.365, 938.345, 938.363 or 938.365 setting rules of parental visitation until the termination of the temporary order under par. (b) or injunction under par. (c).

(e) 1. Except as provided in subd. 2., the court shall issue a temporary order and injunction prohibiting a parent of a child from visitation or contact with the child if the parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other parent, and the conviction has not been reversed, set aside or vacated.

2. Subdivision 1. does not apply if the court determines by clear and convincing evidence that the visitation or contact would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

(2) WHO MUST BE SUMMONED. Except as provided in sub. (2m), the petitioner shall cause the summons and petition to be served upon the following persons:

(a) The parent or parents of the child, unless the child's parent has waived the right to notice under s. 48.41 (2) (d).

(b) If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been established:

1. A person who has filed a declaration of interest under s. 48.025.

2. A person or persons alleged to the court to be the father of the child or who may, based upon the statements of the mother or other information presented to the court, be the father of the child unless that person has waived the right to notice under s. 48.41 (2) (c).

3. A person who has lived in a familial relationship with the child and who may be the father of the child.

(c) The guardian, guardian ad litem and legal custodian of the child.

(d) Any other person to whom notice is required to be given by ch. 822, excluding foster parents and treatment foster parents who shall be provided notice as required under sub. (2g).

(e) To the child if the child is 12 years of age or older.

(2g) NOTICE REQUIRED. (a) In addition to causing the summons and petition to be served as required under sub. (2), the petitioner shall also notify any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child of all hearings on the petition. The first notice to any foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) shall be written, shall have a copy of the petition attached to it, shall state the nature, location, date and time of the initial hearing and shall be mailed to the last-known address of the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2). Thereafter, notice of hearings may be given by telephone at least 72 hours before the time of the hearing. The person giving telephone notice shall place in the case file a signed statement of the time notice was given and the person to whom he or she spoke.

(am) The court shall give a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (a) an opportunity to be heard at the hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the hearing, or to submit a written statement prior to the hearing, relevant to the issues to be determined at the hearing. A foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives a notice of a hearing under par. (a) and an opportunity to be heard under this paragraph does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(b) Failure to give notice under par. (a) to a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) does not deprive the court of jurisdiction in the proceeding. If a foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) is not given notice of a hearing under par. (a), that person may request a rehearing on the matter

at any time prior to the entry of an order under s. 48.427 (2) or (3). If the request is made, the court shall order a rehearing.

(2m) NOTICE NOT REQUIRED. Except as provided in this subsection, notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 940.225 (1), (2) or (3), 948.02 (1) or (2) or 948.025 if a physician attests to his or her belief that a sexual assault as specified in this subsection has occurred or if the person who may be the father of the child has been convicted of sexual assault as specified in this subsection for conduct which may have led to the child's conception. A person who under this subsection is not given notice does not have standing to appear and contest a petition for the termination of his parental rights. This subsection does not apply to a person who may be the father of a child conceived as a result of a sexual assault in violation of s. 948.02 (1) or (2) if that person was under 18 years of age at the time of the sexual assault.

(3) CONTENTS OF SUMMONS. The summons shall:

(a) Contain the name and birth date of the child, and the nature, location, date and time of the initial hearing.

(b) Advise the party, if applicable, of his or her right to legal counsel, regardless of ability to pay under s. 48.23 and ch. 977.

(c) Advise the parties of the possible result of the hearing and the consequences of failure to appear or respond.

(d) Advise the parties that if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after the judgment is entered for the right to pursue such relief to be preserved.

(4) MANNER OF SERVING SUMMONS AND PETITION. (a) *Personal service.* A copy of the summons and petition shall be served personally upon the parties specified in sub. (2), if known, at least 7 days before the date of the hearing, except that service of summons is not required if the party submits to the jurisdiction of the court. Service upon parties who are not natural persons and upon persons under a disability shall be as prescribed in s. 801.11.

(b) *Constructive notice.* 1. If with reasonable diligence a party specified in sub. (2) cannot be served under par. (a), service shall be made by publication of the notice under subd. 4.

2. If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been acknowledged under s. 767.62 (1) or a substantially similar law of another state or adjudicated, the court may, as provided in s. 48.422 (6) (b), order publication of a notice under subd. 4.

3. At the time the petition is filed, the petitioner may move the court for an order waiving the requirement of constructive notice to a person who, although his identity is unknown, may be the father of a nonmarital child.

4. A notice published under this subsection shall be published as a class 1 notice under ch. 985. In determining which newspaper is likely to give notice as required under s. 985.02 (1), the petitioner or court shall consider the residence of the party, if known, or the residence of the relatives of the party, if known, or the last-known location of the party. If the party's post-office address is known or can, with due diligence, be ascertained, a copy of the summons and petition shall be mailed to the party upon or immediately prior to the first publication. The mailing may be omitted if the petitioner shows that the post-office address cannot be obtained with due diligence. Except as provided in subd. 5., the notice shall include the date, place and circuit court branch for the hearing, the court file number, the name, address and telephone number of the petitioner's attorney and information the court determines to be necessary to give effective notice to the party or parties. Such information shall include the following, if known:

a. The name of the party or parties to whom notice is being given;

b. A description of the party or parties;

c. The former address of the party or parties;

d. The approximate date and place of conception of the child; and

e. The date and place of birth of the child.

5. The notice shall not include the name of the mother unless the mother consents. The notice shall not include the name of the child unless the court finds that inclusion of the child's name is essential to give effective notice to the father.

(c) The notice under par. (a) or (b) shall also inform the parties:

1. That the parental rights of a parent or alleged parent who fails to appear may be terminated;

2. Of the party's right to have an attorney present and that if a person desires to contest termination of parental rights and believes that he or she cannot afford an attorney, the person may ask the state public defender to represent him or her; and

3. That if the court terminates parental rights, a notice of intent to pursue relief from the judgment must be filed in the trial court within 30 days after judgment is entered for the right to pursue such relief to be preserved.

History: 1973 c. 263; 1977 c. 354; 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 391; 1983 a. 447; 1985 a. 94; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987 a. 383; 1989 a. 86; 1993 a. 395,436; 1995 a. 108,225,275,352; 1997 a. 35, 80, 191,237; 1999 a. 9, 83.

Judicial Council Note, 1986: Subs. (3) (d) and (4) (c) are amended to require notice to the parties of the time and manner for initiating an appeal from a judgment terminating parental rights. [Re Order eff. 7-1-87]

Guardianship and TPR proceedings are custody proceedings, guardianship and TPR determinations are custody determinations, and guardianship and TPR determinations are custody decrees. all governed by ch. 822. In Interest of A.E.H. 161 Wis. 2d 277,468 N.W.2d 190 (1991).

Sub. (2m) denies a putative father standing to contest the alleged grounds for termination when the child was conceived as the result of sexual assault. Termination of Parental Rights to A. M. 176 Wis. 2d 673,500 N.W.2d 649 (1993).

Sub. (2) (d) requires consideration in each case of whether ch. 822 applies but does not require the application of ch. 822 to intrastate cases. In Interest of Brandon S.S. 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

Sub. (2) is the exclusive statute for dettmining what parties may be summoned; intervention under s. 803.09 does not apply. In Interest of Brandon S.S. 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

Sexual assault under sub. (2m) does not include a violation of s. 948.09. sexual intercourse with a child age 16 or older. Paternity of Michael A.T. 182 Wis. 2d 395, 513 N.W.2d 669 (Ct. App. 1994).

48.422 Hearing on the petition. (1) The hearing on the petition to terminate parental rights shall be held within 30 days after the petition is filed. At the hearing on the petition to terminate parental rights the court shall determine whether any party wishes to contest the petition and inform the parties of their rights under sub. (4) and s. 48.423.

(2) If the petition is contested the court shall set a date for a fact-finding hearing to be held within 45 days of the hearing on the petition, unless all of the necessary parties agree to commence with the hearing on the merits immediately.

(3) If the petition is not contested the court shall hear testimony in support of the allegations in the petition, including testimony as required in sub. (7).

(4) Any party who is necessary to the proceeding or whose rights may be affected by an order terminating parental rights shall be granted a jury trial upon request if the request is made before the end of the initial hearing on the petition.

(5) Any nonpetitioning party, including the child, shall be granted a continuance of the hearing for the purpose of consulting with an attorney on the request for a jury trial or concerning a request for the substitution of a judge.

(6) (a) If the child is a nonmarital child who is not adopted or whose parents do not subsequently intermarry under s. 767.60 and paternity has not been established, the court shall hear testimony concerning the paternity of the child. Based on the testimony, the court shall determine whether all interested parties who are known have been notified under s. 48.42 (2). If not, the court shall adjourn the hearing and order appropriate notice to be given.

(b) If the court determines that an unknown person may be the father of the child and notice to that person has not been waived under s. 48.42 (4) (b) 3., the court shall determine whether constructive notice will substantially increase the likelihood of notice to that person. If the court does determine that it would sub-

stantially increase the likelihood of notice and the petitioner has not already caused the notice to be published or the court determines that the publication used was not sufficient, the court shall adjourn the hearing for a period not to exceed 30 days and shall order constructive notice under s. 48.42 (4) (b). If the court determines that constructive notice will not substantially increase the likelihood of notice to that person, the court shall order that the hearing proceed.

(c) If paternity is adjudicated under this subchapter and parental rights are not terminated, the court may make and enforce such orders for the suitable care, custody and support of the child as a court having jurisdiction over actions affecting the family may make under ch. 767. If there is a finding by the court that the child is in need of protection or services, the court may make dispositional orders under s. 48.345.

(7) Before accepting an admission of the alleged facts in a petition, the court shall:

(a) Address the parties present and determine that the admission is made voluntarily with understanding of the nature of the acts alleged in the petition and the potential dispositions.

(h) Establish whether any promises or threats were made to elicit an admission and alert all unrepresented parties to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to them.

(bm) Establish whether a proposed adoptive parent of the child has been identified. If a proposed adoptive parent of the child has been identified and the proposed adoptive parent is not a relative of the child, the court shall order the petitioner to submit a report to the court containing the information specified in s. 48.913 (7). The court shall review the report to determine whether any payments or agreement to make payments set forth in the report are coercive to the birth parent of the child or to an alleged to presumed father of the child or are impermissible under s. 48.913 (4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall dismiss the petition or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24 (1). This paragraph does not apply if the petition was filed with a petition for adoptive placement under s. 48.837 (2).

(c) Make such inquiries as satisfactorily establish that there is a factual basis for the admission.

(8) If the petition for termination of parental rights is filed by an agency enumerated in s. 48.069 (1) or (2), the court shall order the agency to submit a report to the court as provided in s. 48.425.

(9) (a) If a petition for termination of the rights of a birth parent, as defined under s. 48.432 (1) (am), is filed by a person other than an agency enumerated under s. 48.069 (1) or (2) or if the court waives the report required under s. 48.425, the court shall order any parent whose rights may be terminated to file with the court the information specified under s. 48.425 ¶ (1) (am).

(b) If a birth parent does not comply with par. (a), the court shall order any health care provider as defined under s. 146.81 (1) known to have provided care to the birth parent or parents to provide the court with any health care records of the birth parent or parents that are relevant to the child's medical condition or genetic history. A court order for the release of alcohol or drug abuse treatment records subject to 21 USC 1175 or 42 USC 4582 shall comply with 42 CFR 2.

History: 1979 c. 330; 1981 c. 359; 1983 a. 326; 1983 a. 437 ss. 10, 67; 1984 a. 176; 1997 a. 104.

The court erred by failing to inform parents of the right to jury trial and to representation by counsel. In re Termination of Parental Rights to M. A. M. 116 Wis. 2d 432, 342 N.W.2d 410 (1984).

Concurrent TPR/adoption proceedings under s. 48.835 are subject to the requirement under s. 48.422 that the initial hearing be held within 30 days of filing the petition. In re J.L.F. 168 Wis. 2d 634, 484 N.W.2d 359 (Ct. App. 1992).

A court's failure to inform parents of their rights under this section is not reversible error absent prejudice to the parents. Interest of Robert D. 181 Wis. 2d 887, 512 N.W.2d 227 (Ct. App. 1994).

The general time requirements of s. 48.315 (2) control extensions of the time limit under sub. (1). There are no provisions for waiver of time limits, and the only provisions for delays, continuances, and extensions are under s. 48.315. State v. April O. 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927.

Due process does not require appointment of counsel for indigent parents in every parental status termination proceeding. Lassiter v. Dept. of Social Services, 452 U.S. 18 (1981).

48.423 Rights of persons alleging paternity. If a man who alleges that he is the father of the child appears at the hearing and wishes to contest the termination of his parental rights, the court shall set a date for a hearing on the issue of paternity or, if all parties agree, the court may immediately commence hearing testimony concerning the issue of paternity. The court shall inform the man claiming to be the father of the child of any right to counsel under s. 48.23. The man claiming to be the father of the child must prove paternity by clear and convincing evidence.

History: 1979 c. 330.

Putative father's right to custody of his child. 1971 WLR 1261.

48.424 Fact-finding hearing. (1) The purpose of the fact-finding hearing is to determine whether grounds exist for the termination of parental rights in those cases where the termination was contested at the hearing on the petition under s. 48.422.

(2) The fact-finding hearing shall be conducted according to the procedure specified in s. 48.31 except that:

(a) The court may exclude the child from the hearing; and

(b) The hearing shall be closed to the public.

(3) If the facts are determined by a jury, the jury may only decide whether any grounds for the termination of parental rights have been proven. The court shall decide what disposition is in the best interest of the child.

(4) If grounds for the termination of parental rights are found by the court or jury, the court shall find the parent unfit. A finding of unfitness shall not preclude a dismissal of a petition under s. 48.427 (2). The court shall then proceed immediately to hear evidence and motions related to the dispositions enumerated in s. 48.427. The court may delay making the disposition and set a date for a dispositional hearing no later than 45 days after the fact-finding hearing if:

(a) All parties to the proceeding agree; or

(b) The court has not yet received a report to the court on the history of the child as provided in s. 48.425 from an agency enumerated in s. 48.069 (1) or (2) and the court now directs the agency to prepare this report to be considered before the court makes the disposition on the petition.

(5) If the court delays making a permanent disposition under sub. (4), it may transfer temporary custody of the child to an agency for placement of the child until the dispositional hearing.

History: 1979 c. 330; 1987 a. 383.

Despite jury findings that grounds for termination exist, the court may dismiss a termination petition if evidence does not support the jury's finding or if the evidence of unfitness is not so egregious as to warrant termination; whether the evidence supports termination is a matter of discretion. In Interest of K.D.J. 163 Wis. 2d 90, 470 N.W.2d 914 (1991).

The general time requirements of s. 48.315 (2) control extensions of the time limit under sub. (4). There are no provisions for waiver of time limits, and the only provisions for delays, continuances and extensions are under s. 48.315. State v. April O. 2000 WI App 70, 233 Wis. 2d 663, 607 N.W.2d 927.

48.425 Court report by an agency. (1) If the petition for the termination of parental rights is filed by an agency, or if the court orders a report under s. 48.424 (4) (b), the agency shall file a report with the court which shall include:

(a) The social history of the child.

(am) A medical record of the child on a form provided by the department which shall include:

1. The medical and genetic history of the birth parents and any medical and genetic information furnished by the birth parents about the child's grandparents, aunts, uncles, brothers and sisters.

2. **A** report of any medical examination which either birth parent had within one year before the date of the petition.

3. **A** report describing the child's prenatal care and medical condition at birth.

4. The medical and genetic history of the child and any other relevant medical and genetic information.

(b) **A** statement of the facts supporting the need for termination.

(c) If the child has been previously adjudicated to be in need of protection and services, a statement of the steps the agency or person responsible for provision of services has taken to remedy the conditions responsible for court intervention and the parent's response to and cooperation with these services. If the child has been removed from the home, the report should also include a statement of the reasons why the child cannot be returned safely to the family, and the steps the person or agency has taken to effect this return.

(d) **A** statement of other appropriate services, if any, which might allow the child to return safely to the home of the parent.

(e) **A** statement applying the standards and factors enumerated in s. 48.426 (2) and (3) to the case before the court.

(f) If the report recommends that the parental rights of both of the child's parents or the child's only living or known parent are to be terminated, the report shall contain a statement of the likelihood that the child will be adopted. This statement shall be prepared by an agency designated in s. 48.427 (3m) (a) 1. to 4. and include a presentation of the factors which might prevent adoption, those which would facilitate it, and the agency which would be responsible for accomplishing the adoption.

(g) If an agency designated under s. 48.427 (3m) (a) 1. to 4. determines that it is unlikely that the child will be adopted, or if adoption would not be in the best interests of the child, the report shall include a plan for placing the child in a permanent family setting. The plan shall include a recommendation as to the agency to be named guardian of the child or a recommendation that the person appointed as the guardian of the child under s. 48.977 (2) continue to be the guardian of the child.

(1m) The agency required under sub. (1) to file the report shall prepare the medical record within 60 days after the date of the petition for the termination of parental rights.

(2) The court may waive the report required under this section if consent is given under s. 48.41, but shall order the birth parent or parents to provide the department with the information specified under sub. (1) (am).

(3) The court may order a report as specified under this section to be prepared by an agency in those cases where the petition is filed by someone other than an agency.

History: 1979 c. 330; 1981 c. 81 s.33; 1981 c. 359; 1983 a. 471; 1985 a. 176; 1995 a. 275; 1997 a. 237.

48.426 Standard and factors. **C****O****U****R****T** **C****O****N****S****I****D****E****R****A****T****I****O****N****S**. In making a decision about the appropriate disposition under s. 48.427, the court shall consider the standard and factors enumerated in this section and any report submitted by an agency under s. 48.425.

(2) STANDARD. The best interests of the child shall be the prevailing factor considered by the court in determining the disposition of all proceedings under this subchapter.

(3) FACTORS. In considering the best interests of the child under this section the court shall consider but not be limited to the following:

(a) The likelihood of the child's adoption after termination.

(b) The age and health of the child, both at the time of the disposition and, if applicable, at the time the child was removed from the home.

(c) Whether the child has substantial relationships with the parent or other family members, and whether it would be harmful to the child to sever these relationships.

(d) The wishes of the child.

(e) The duration of the separation of the parent from the child.

(f) Whether the child will be able to enter into a more stable and permanent family relationship as a result of the termination, taking into account the conditions of the child's current placement, the likelihood of future placements and the results of prior placements.

History: 1979 c. 330.

When grandparents opposing termination had a substantial relationship with the child and wished to participate in the proceedings, it was error to exclude their testimony in determining the child's best interest. In *Interest of Brandon S.S.* 179 Wis. 2d 114, 507 N.W.2d 94 (1993).

A termination of parental rights works a legal severance of the relationship between the child and the child's birth family. Sub. (3) (c) requires an examination of the harmful effect of the legal severance on the child's relationships with the birth family. The court may consider an adoptive parent's promise to continue the relationship, but it is not bound to hinge its determination on that legally unenforceable promise. *State v. Margaret H.* 2000 WI 42, 234 Wis. 2d 606, 610 N.W.2d 475.

48.427 Dispositions. **C****A****N****y** party may present evidence relevant to the issue of disposition, including expert testimony, and may make alternative dispositional recommendations to the court. After receiving any evidence related to the disposition; the court shall enter one of the dispositions specified under subs. (2) to (4) within 10 days.

(1m) In addition to any evidence presented under sub. (1), the court shall give the foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) of the child an opportunity to be heard at the dispositional hearing by permitting the foster parent, treatment foster parent or other physical custodian to make a written or oral statement during the dispositional hearing, or to submit a written statement prior to disposition, relevant to the issue of disposition. **A** foster parent, treatment foster parent or other physical custodian described in s. 48.62 (2) who receives notice of a hearing under s. 48.42 (2g) (a) and an opportunity to be heard under this subsection does not become a party to the proceeding on which the hearing is held solely on the basis of receiving that notice and opportunity to be heard.

(2) The court may dismiss the petition if it finds that the evidence does not warrant the termination of parental rights.

(3) The court may enter an order terminating the parental rights of one or both parents.

(3m) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has not been appointed under s. 48.977, the court shall either:

(a) Transfer guardianship and custody of the child pending adoptive placement to:

1. **A** county department authorized to accept guardianship under s. 48.57 (1) (e) or (hm).

3. **A** child welfare agency licensed under s. 48.61 (5) to accept guardianship.

4. The department.

5. **A** relative with whom the child resides, if the relative has filed a petition to adopt the child or if the relative is a kinship care relative.

6. An individual who has been appointed guardian of the child by a court of a foreign jurisdiction.

(b) Transfer guardianship of the child to one of the agencies specified under par. (a) 1. to 4. and custody of the child to an individual in whose home the child has resided for at least 12 consecutive months immediately prior to the termination of parental rights or to a relative.

(3p) If the rights of both parents or of the only living parent are terminated under sub. (3) and if a guardian has been appointed under s. 48.977, the court may enter one of the orders specified in sub. (3m). If the court enters an order under this subsection, the court shall terminate the guardianship under s. 48.977.

(4) If the rights of one or both parents are terminated under sub. (3), the court may enter an order placing the child in sustaining care under s. 48.428.

(6) If an order is entered under sub. (3), the court shall:

(a) Inform each birth parent, as defined under s. 48.432 (1) (am), whose rights have been terminated of the provisions of ss. 48.432, 48.433 and 48.434.

(b) Forward to the department:

1. The name and date of birth of the child whose birth parent's rights have been terminated.

2. The names and current addresses of the child's birth parents, guardian and legal custodian.

3. The medical and genetic information obtained under s. 48.422 (9) or 48.425 (1) (am) or (2).

(7) (a) If an order is entered under sub. (3), the court may orally inform the parent or parents who appear in court of the ground for termination of parental rights specified in s. 48.415 (10).

(b) In addition to the notice permitted under par. (a), any written order under sub. (3) may notify the parent or parents of the information specified in par. (a).

History: 1979 c. 330; 1981 c. 81, 359; 1985 a. 70, 176; 1995 a. 275, 289; 1997 a. 80, 104, 237.

Once a basis for termination has been found by the jury and confirmed with a finding of unfitness by the court, the court must move to the dispositional hearing, in which the prevailing factor is the best interests of the child. A court should not dismiss a petition for termination at a dispositional hearing unless it can reconcile dismissal with the best interests of the child. Termination of Parental Rights to Prestin T.B. 2002 WI 95, ___ Wis. 2d ___, 848 N.W.2d ___.

48.428 Sustaining care. (1) A court may place a child in sustaining care if the court has terminated the parental rights of the parent or parents of the child or has appointed a guardian for the child under s. 48.831 and the court finds that the child is unlikely to be adopted or that adoption is not in the best interest of the child.

(2) (a) Except as provided in par. (b), when a court places a child in sustaining care after an order under s. 48.427 (4), the court shall transfer legal custody of the child to the county department, the department, in a county having a population of 500,000 or more, or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a licensed foster parent, licensed treatment foster parent or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, this licensed foster parent, licensed treatment foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3).

(b) When a court places a child in sustaining care after an order under s. 48.427 (4) with a person who has been appointed as the guardian of the child under s. 48.977 (2), the court may transfer legal custody of the child to the county department, the department, in a county having a population of 500,000 or more; or a licensed child welfare agency, transfer guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4. and place the child in the home of a licensed foster parent, licensed treatment foster parent or kinship care relative with whom the child has resided for 6 months or longer. Pursuant to such a placement, that licensed foster parent, licensed treatment foster parent or kinship care relative shall be a sustaining parent with the powers and duties specified in sub. (3). If the court transfers guardianship of the child to an agency listed in s. 48.427 (3m) (a) 1. to 4., the court shall terminate the guardianship under s. 48.977.

(3) Subject to the authority of the guardian and legal custodian of the child and to any treatment or dispositional plans for the child established by the court, the sustaining parent has the rights and responsibilities necessary for the day-to-day care of the child, including but not limited to:

(a) The authority to consent to routine and emergency health care for the child.

(b) The authority to sign the child's application for a license under s. 343.15.

(c) The authority to approve the child's participation in school and youth group activities.

(d) The authority to travel out of state with the child and consent to the child's travel out of state.

(e) The authority to act as the child's parent under subch. V of ch. 115 and s. 118.125.

(4) Before a licensed foster parent, licensed treatment foster parent or kinship care relative may be appointed as a sustaining parent, the foster parent, treatment foster parent or kinship care relative shall execute a contract with the agency responsible for providing services to the child, in which the foster parent, treatment foster parent or kinship care relative agrees to provide care for the child until the child's 18th birthday unless the placement order is changed by the court because the court finds that the sustaining parents are no longer able or willing to provide the sustaining care or the court finds that the behavior of the sustaining parents toward the child would constitute grounds for the termination of parental rights if the sustaining parent was the birth parent of the child.

(6) (a) Except as provided in par. (b), the court may order or prohibit visitation by a birth parent of a child placed in sustaining care.

(b) 1. Except as provided in subd. 2., the court may not grant visitation under par. (a) to a birth parent of a child who has been placed in sustaining care if the birth parent has been convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other birth parent, and the conviction has not been reversed, set aside or vacated.

Im. Except as provided in subd. 2., if a birth parent who is granted visitation rights with a child under par. (a) is convicted under s. 940.01 of the first-degree intentional homicide, or under s. 940.05 of the 2nd-degree intentional homicide, of the child's other birth parent, and the conviction has not been reversed, set aside or vacated, the court shall issue an order prohibiting the birth parent from having visitation with the child on petition of the child, the guardian or legal custodian of the child, or the district attorney or corporation counsel of the county in which the dispositional order was entered, or on the court's own motion, and on notice to the birth parent.

2. Subdivisions 1. and Im. do not apply if the court determines by clear and convincing evidence that the visitation would be in the best interests of the child. The court shall consider the wishes of the child in making that determination.

History: 1979 c. 330; 1981 c. 81 s. 33; 1981 c. 359 s. 16; 1985 a. 70; 1985 a. 176; 1989 a. 161; 1993 a. 446; 1995 a. 275, 289; 1997 a. 27, 164; 1999 a. 9.

48.43 Court orders: contents and effect; review.

(1) The court shall enter a judgment setting forth its findings and disposition in accordance with s. 48.426 in an order implementing the disposition chosen. If the court dismisses the petition under s. 48.427 (2), the order shall contain the reasons for dismissal. If the disposition is for the termination of parental rights under s. 48.427 (3), the order shall contain all of the following:

(a) The identity of any agency or individual that has received guardianship of the child or will receive guardianship or custody of the child upon termination and the identity of the agency which will be responsible for securing the adoption of the child or establishing the child in a permanent family setting.

(b) If the child will be in need of continued care and treatment after termination, the agencies and persons responsible.

(c) If an agency receives custody of the child under par. (a), the child's permanency plan prepared under s. 48.38 by the agency. If a permanency plan has not been prepared at the time the order is entered, or if the court enters an order that is not consistent with the permanency plan: the agency shall prepare a permanency plan that is consistent with the order or revise the permanency plan to conform to the order and shall file the plan with the court within 60 days from the date of the order.

(d) A finding that the termination of parental rights is in the best interests of the child.

(2) An order terminating parental rights permanently severs all legal rights and duties between the parent and the child.

(3) If only one parent consents under s. 48.41 or if the grounds specified in s. 48.415 are found to exist as to only one parent, the rights of only that parent may be terminated without affecting the rights of the other parent.

(4) A certified copy of the order terminating parental rights shall be furnished by the court to the agency given guardianship for placement for adoption of the child or to the person or agency given custodianship or guardianship for placement of the child in sustaining care and to the person appointed as the guardian of the child under s. 48.977 (2). The court shall, upon request, furnish a certified copy of the child's birth certificate and a transcript of the testimony in the termination of parental rights hearing to the same person or agency.

(5) (a) If the custodian specified in sub. (1) (a) is an agency, the agency shall report to the court on the status of the child at least once each year until the child is adopted or reaches 18 years of age, whichever is sooner. The agency shall file an annual report no less than 30 days before the anniversary of the date of the order. An agency may file an additional report at any time if it determines that more frequent reporting is appropriate. A report shall summarize the child's permanency plan and the recommendations of the review panel under s. 48.38 (5), if any, and shall describe any progress that has been made in finding a permanent placement for the child.

(b) The court shall hold a hearing to review the permanency plan within 30 days after receiving a report under par. (a). At least 10 days before the date of the hearing, the court shall provide notice of the time, date and purpose of the hearing to the agency that prepared the report, the child's guardian, the child, if he or she is 12 years of age or over, and the child's foster parent, treatment foster parent, other physical custodian described in s. 48.62 (2) or the operator of the facility in which the child is living.

(c) Following the hearing, the court shall make all of the determinations specified under s. 48.38 (5) (c), except the determinations relating to the child's parents. The court may amend the order under sub. (1) to transfer the child's guardianship and custody to any agency specified under s. 48.427 (3m) (a) 1. to 4. which consents to the transfer, if the court determines that the transfer is in the child's best interest. If an order is amended, the agency that prepared the permanency plan shall revise the plan to conform to the order and shall file a copy of the revised plan with the court. Each plan filed under this paragraph shall be made a part of the court order.

(5m) Either the court or the agency that prepared the permanency plan shall furnish a copy of the original plan and each revised plan to the child, if he or she is 12 years of age or over, and to the child's foster parent, the child's treatment foster parent or the operator of the facility in which the child is living.

(6) Judgments under this subchapter terminating parental rights are final and are appealable under s. 808.03 (1) according to the procedure specified in s. 809.107.

(7) If the agency specified under sub. (1) (a) is the department and a permanent adoptive placement is not in progress 2 years after entry of the order, the department may petition the court to transfer legal custody of the child to a county department. The court shall transfer the child's custody to the county department specified in the petition. The department shall remain the child's guardian.

History: 1979c. 330; 1983a. 27,219. 286; 1985a. 70, 176,332; Sup. Ct. Order, 136 Wis. 2d xxv (1987); 1987a. 383; 1993a. 395,446; 1995a. 275; 1997a. 235.

The appeal process in a termination case must be commenced within 30 days after the order is entered. In Interest of J.D. 106 Wis. 2d 126,315 N.W.2d 365 (1982).

Termination has the same effect on relationships between members of the biological parents' families and the child as it has on the parent-child relationship. Equitable considerations did not form a basis to allow biological grandparents to obtain visitation rights after termination and adoption. *Elgin and Carol W. v. DHFS*, 221 Wis. 2d 36,554 N.W.2d 195 (Ct. App. 1998).

48.432 Access to medical information. (1) In this section:

(a) "Adoptee" means a person who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982.

(ag) "Agency" means a county department or a licensed child welfare agency.

(am) "Birth parent" means either:

1. The mother designated on the individual's or adoptee's original birth certificate.

2. One of the following:

a. The adjudicated father.

b. If there is no adjudicated father, the husband of the mother at the time the individual or adoptee is conceived or born, or when the parents intermarry under s. 767.60.

(b) "Individual" means a person whose birth parent's rights have been terminated in this state at any time.

(2) (a) The department, or agency contracted with under sub. (9), shall maintain all information obtained under s. 48.427 (6) (b) in a centralized birth record file.

(b) Any birth parent whose rights to a child have been terminated in this state at any time, or who consented to the adoption of a child before February 1, 1982, may file with the department, or agency contracted with under sub. (9), any relevant medical or genetic information about the child or the child's birth parents, and the department or agency shall maintain the information in the centralized birth record file.

(3) (a) The department, or agency contracted with under sub. (9), shall release the medical information under sub. (2) to any of the following persons upon request:

1. An individual or adoptee 18 years of age or older.

2. An adoptive parent of an adoptee.

3. The guardian or legal custodian of an individual or adoptee.

4. The offspring of an individual or adoptee if the requester is 18 years of age or older.

5. An agency or social worker assigned to provide services to the individual or adoptee or place the individual for adoption.

(b) Before releasing the information under par. (a), the department, or agency contracted with under sub. (9), shall delete the name and address of the birth parent and the identity of any provider of health care to the individual or adoptee or to the birth parent.

(c) The person making a request under this subsection shall pay a fee for the cost of locating, verifying, purging, summarizing, copying and mailing the medical or genetic information according to a fee schedule established by the department, or agency contracted with under sub. (9), based on ability to pay. The fee may not be more than \$150 and may be waived by the department or agency.

(4) (a) Whenever any person specified under sub. (3) wishes to obtain medical and genetic information about an individual whose birth parent's rights have been terminated in this state at any time, or whose birth parent consented to his or her adoption before February 1, 1982, or medical and genetic information about the birth parents of such an individual or adoptee, and the information is not on file with the department, or agency contracted with under sub. (9), the person may request that the department or agency conduct a search for the birth parents to obtain the information. The request shall be accompanied by a statement

from a physician certifying either that the individual or adoptee has or may have acquired a genetically transferable disease or that the individual's or adoptee's medical condition requires access to the information.

(b) Upon receipt of a request under par. (a), the department, or agency contracted with under sub. (9), shall undertake a diligent search for the individual's or adoptee's parents.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (9), shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(e) The department or agency conducting the search shall, upon locating a birth parent, notify him or her of the request and of the need for medical and genetic information.

(f) The department, or agency contracted with under sub. (9), shall release to the requester any medical or genetic information provided by a birth parent under this subsection without disclosing the birth parent's identity or location.

(g) If a birth parent is located but refuses to provide the information requested, the department, or agency contracted with under sub. (9), shall notify the requester, without disclosing the birth parent's identity or location, and the requester may petition the circuit court to order the birth parent to disclose the information. The court shall grant the motion for good cause shown.

(7)(a) If the department or another agency that maintains records relating to the adoption of an adoptee or the termination of parental rights receives a report from a physician stating that a birth parent or another offspring of the birth parent has acquired or may have a genetically transferable disease, the department or agency shall notify the individual or adoptee of the existence of the disease, if he or she is 18 years of age or over, or notify the individual's or adoptee's guardian, custodian or adoptive parent if the individual or adoptee is under age 18.

(b) If the department or agency receives a report from a physician that an individual or adoptee has acquired or may have a genetically transferable disease, the department or agency shall notify the individual's or adoptee's birth parent of the existence of the disease.

(c) Notice under par. (a) or (b) shall be sent to the most recent address on file with the agency or the department.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(8m) The department, or agency contracted with under sub. (9), shall give priority to all of the following:

(a) Reports filed by physicians under sub. (7).

(b) A request or a court order for medical or genetic information under subs. (3) and (4) if it is accompanied by a statement from a physician certifying that a child has acquired or may have a genetically transferable disease.

(c) Any reports and requests specified by the department by rule.

(9) The department shall promulgate rules to implement this section and may contract with an agency to administer this section.

History: 1981 c. 359; 1983 a. 447, 471; 1985 a. 176; 1985 a. 332 a. 251 (1); 1989 a. 31; 1995 a. 27.

Cross Reference: See also ch. HFS 53, Wis. adm. code.

48.433 Access to identifying information about parents. (1) In this section:

(a) "Agency" has the meaning given under s. 48.432 (1) (ag).

(b) "Birth parent" has the meaning given under s. 48.432 (1) (am).

(2) Any birth parent whose rights have been terminated in this state at any time, or who has consented to the adoption of his or her child in this state before February 1, 1982, may file with the department, or agency contracted with under sub. (11), an affidavit authorizing the department or agency to provide the child with his or her original birth certificate and with any other available information about the birth parent's identity and location. An affidavit filed under this subsection may be revoked at any time by notifying the department or agency in writing.

(3) Any person 21 years of age or over whose birth parent's rights have been terminated in this state or who has been adopted in this state with the consent of his or her birth parent or parents before February 1, 1982, may request the department, or agency contracted with under sub. (11), to provide the person with the following:

(a) The person's original birth certificate.

(b) Any available information regarding the identity and location of his or her birth parents.

(4) Before acting on the request, the department, or agency contracted with under sub. (11), shall require the requester to provide adequate identification.

(5) The department, or agency contracted with under sub. (11), shall disclose the requested information in either of the following circumstances:

(a) The department, or agency contracted with under sub. (11), has on file unrevoked affidavits filed under sub. (2) from both birth parents.

(b) One of the birth parents was unknown at the time of the proceeding for termination of parental rights or consent adoption and the known birth parent has filed an unrevoked affidavit under sub. (2).

(6)(a) If the department, or agency contracted with under sub. (11), does not have on file an affidavit from each known birth parent, it shall, within 3 months after the date of the original request, undertake a diligent search for each birth parent who has not filed an affidavit. The search shall be completed within 6 months after the date of the request, unless the search falls within one of the exceptions established by the department by rule. If any information has been provided under sub. (5), the department or agency is not required to conduct a search.

(c) Employees of the department and any agency conducting a search under this subsection may not inform any person other than the birth parents of the purpose of the search.

(d) The department, or agency contracted with under sub. (11), shall charge the requester a reasonable fee for the cost of the search. When the department or agency determines that the fee will exceed \$100 for either birth parent, it shall notify the requester. No fee in excess of \$100 per birth parent may be charged unless the requester, after receiving notification under this paragraph, has given consent to proceed with the search.

(7)(a) The department or agency conducting the search shall, upon locating a birth parent, make at least one verbal contact and notify him or her of the following:

1. The nature of the information requested.

2. The date of the request.

3. The fact that the birth parent has the right to file with the department the affidavit under sub. (2).

(b) Within 3 working days after contacting a birth parent, the department, or agency contracted with under sub. (11), shall send the birth parent a written copy of the information specified under par. (a) and a blank copy of the affidavit.

(c) If the birth parent files the affidavit, the department, or agency contracted with under sub. (11), shall disclose the requested information if permitted under sub. (5).

(d) If the department or an agency has contacted a birth parent under this subsection, and the birth parent does not file the affidavit, the department may not disclose the requested information.

(e) If, after a search under this subsection, a known birth parent cannot be located, the department, or agency contracted with under sub. (11), may disclose the requested information if the other birth parent has filed an unrevoked affidavit under sub. (2).

(f) The department or agency conducting a search under this subsection may not contact a birth parent again on behalf of the same requester until at least 12 months after the date of the previous contact. Further contacts with a birth parent under this subsection on behalf of the same requester may be made only if 5 years have elapsed since the date of the last contact.

(8)(a) If a birth parent is known to be dead and has not filed an unrevoked affidavit under sub. (2), the department, or agency contracted with under sub. (11), shall so inform the requester. The department or agency may not provide the requester with his or her original birth certificate or with the identity of that parent, but shall provide the requester with any available information it has on file regarding the identity and location of the other birth parent if both of the following conditions exist:

1. The other birth parent has filed an unrevoked affidavit under sub. (2).

2. One year has elapsed since the death of the deceased birth parent.

(b) If a birth parent is known to be dead, the department, or agency contracted with under sub. (11), in addition to the information provided under par. (a), shall provide the requester with any nonidentifying social history information about the deceased parent on file with the department or agency.

(8m) If the department, or agency contracted with under sub. (11), may not disclose the information requested under this section, it shall provide the requester with any nonidentifying social history information about either of the birth parents that it has on file.

(9) The requester may petition the circuit court to order the department or agency designated by the department to disclose any information that may not be disclosed under this section. The court shall grant the petition for good cause shown.

(10) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(11) The department shall promulgate rules to implement this section and may contract with an agency to administer this section.

History: 1981 c. 359,391; 1983 a. 471; 1985 a. 176; 1985 a. 332 s. 251 (l); 1989 a. 31; 1995 a. 27.

Cross Reference: See also ch. HFS 53, Wis. adm. code.

48.434 Release of identifying information by an agency when authorization is granted. (1) DEFINITIONS. In this section:

(a) "Adoptive parent" means a person who has adopted a child in this state or who has adopted in another state a child who was placed for adoption with that person in this state.

(b) "Birth parent" has the meaning given under s. 48.432 (1) (am).

(2) Any birth parent of a child may file with the agency that placed the child for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837 (6) (d) a written authorization for the agency to release any available information about the birth parent's identity and location to one or both adoptive parents of the child.

(3) Any adoptive parent of a child may file with the agency that placed the child for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837 (6) (d) a written authorization for the agency to release any available information about the adoptive parent's identity and location to one or both birth parents of the child.

(4) A written authorization filed under sub. (2) or (3) may be revoked at any time by notifying the agency in writing.

(5) Upon the request of an adoptive parent of a child, the agency receiving the request shall provide to the adoptive parent any available information about the identity and location of a birth parent of the child if the agency has on file an unrevoked written authorization filed by that birth parent under sub. (2) authorizing the release of that information to the adoptive parent.

(6) Upon the request of a birth parent of a child, the agency receiving the request shall provide to the birth parent any available information about the identity and location of an adoptive parent of the child if the agency has on file an unrevoked written authorization filed by that adoptive parent under sub. (3) authorizing the release of that information to the birth parent.

(7) This section does not apply if the adopted child is 21 years of age or over.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(9) An agency may assess a reasonable fee for responding to a request for information or a request to file a written authorization under this section.

(10) No agency may contact any person for the purpose of determining whether the person wishes to authorize the agency to release information under this section. An agency may contact the birth parent or adoptive parent of a child who was adopted before April 29, 1998, one time, by mail, to inform them of the procedure by which identifying information may be released under this section.

(11) A written authorization filed with an agency under this section shall be notarized.

History: 1997 a. 104.

NOTE: 1997 Wis. Act 104, which affected this section, contains explanatory notes.

48.435 Custody of children. The mother of a nonmarital child has legal custody of the child unless the court grants legal custody to another person or transfers legal custody to an agency.

History: 1979 c. 330; 1983 a. 447.

SUBCHAPTER IX

JURISDICTION OVER PERSON 17 OR OLDER

48.44 Jurisdiction over persons 17 or older. (1) The court has jurisdiction over persons 17 years of age or older as provided under ss. 48.133, 48.355 (4) and 48.45 and as otherwise specifically provided in this chapter.

(2) The court has jurisdiction over a person subject to an order under s. 48.366 for all matters relating to that order.

History: 1971 c. 213 s. 5; 1975 c. 39; 1977 c. 354; 1987 a. 27; 1989 a. 121; 1995 a. 27; 1997 a. 35, 292.

48.45 Orders applicable to adults. (1) (a) If in the hearing of a case of a child alleged to be in a condition described in s. 48.13 it appears that any person 17 years of age or older has been guilty of contributing to, encouraging, or tending to cause by any act or omission, such condition of the child: the judge may make orders with respect to the conduct of such person in his or her relationship to the child, including orders determining the ability of the person to provide for the maintenance or care of the child and

directing when, how and where funds for the maintenance or care shall be paid.

(am) If in the hearing of a case of an unborn child and the unborn child's expectant mother alleged to be in a condition described in s. 48.133 it appears that any person 17 years of age or over has been guilty of contributing to, encouraging, or tending to cause by any act or omission, such condition of the unborn child and expectant mother, the judge may make orders with respect to the conduct of such person in his or her relationship to the unborn child and expectant mother.

(b) An act or failure to act contributes to a condition of a child as described in s. 48.13 or an unborn child and the unborn child's expectant mother as described in s. 48.133, although the child is not actually adjudicated to come within the provisions of s. 48.13 or the unborn child and expectant mother are not actually adjudicated to come within the provisions of s. 48.133, if the natural and probable consequences of that act or failure to act would be to cause the child to come within the provisions of s. 48.13 or the unborn child and expectant mother to come within the provisions of s. 48.133.

(1m) (a) In a proceeding in which a child has been found to be in need of protection or services under s. 48.13, the judge may order the child's parent, guardian or legal custodian to comply with any conditions determined by the judge to be necessary for the child's welfare. An order under this paragraph may include an order to participate in mental health treatment, anger management, individual or family counseling or parent training and education and to make a reasonable contribution, based on ability to pay, toward the cost of those services.

(b) A judge may not order inpatient treatment under par. (a) for a child's parent, guardian or legal custodian. All inpatient treatment commitments or admissions must be conducted in accordance with ch. 51.

(1r) In a proceeding in which an unborn child has been found to be in need of protection or services under s. 48.133, the judge may impose on the expectant mother any disposition permitted under s. 48.347 (1) to (6).

(2) No order under sub. (1) (a) or (am) or (1m) (a) may be entered until the person who is the subject of the contemplated order is given an opportunity to be heard on the contemplated order. The court shall cause notice of the time, place and purpose of the hearing to be served on the person personally at least 10 days before the date of hearing. The procedure in these cases shall, as far as practicable, be the same as in other cases in the court. At the hearing the person may be represented by counsel and may produce and cross-examine witnesses. Any person who fails to comply with any order issued by a court under sub. (1) (a) or (am) or (1m) (a) may be proceeded against for contempt of court. If the person's conduct involves a crime, the person may be proceeded against under the criminal law.

(3) If it appears at a court hearing that any person 17 years of age or older has violated s. 948.40, the judge shall refer the record to the district attorney for criminal proceedings as may be warranted in the district attorney's judgment. This subsection does not prevent prosecution of violations of s. 948.40 without the prior reference by the judge to the district attorney, as in other criminal cases.

History: 1977 c. 354, 419; 1987 a. 332 s. 64; 1989 a. 121; 1993 a. 118, 377; 1995 a. 27, 77; 1997 a. 35, 292.

Involuntary commitment was not authorized by this section. Contempt In Interest of J. S., 137 Wis. 2d 217, 404 N.W.2d 79 (Ct. App. 1987).

SUBCHAPTER X

REHEARING AND APPEAL

48.46 New evidence; relief from judgment terminating parental rights. (1) Except as provided in subs. (1m), (2) and (3), the child whose status is adjudicated by the court, the parent, guardian or legal custodian of that child, the unborn child whose

status is adjudicated by the court or the expectant mother of that unborn child may at any time within one year after the entering of the court's order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing.

(m) Except as provided in sub. (2), the parent, guardian or legal custodian of the child or the child whose status is adjudicated by the court in an order entered under s. 48.43 or an order adjudicating paternity under subch. VIII may, within the time permitted under this subsection, petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. A petition under this subsection shall be filed within one year after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, unless within that one-year period a court in this state or in another jurisdiction enters an order granting adoption of the child, in which case a petition under this subsection shall be filed before the date on which the order granting adoption is entered or within 30 days after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, whichever is later.

(2) A parent who has consented to the termination of his or her parental rights under s. 48.41 or who did not contest the petition initiating the proceeding in which his or her parental rights were terminated may move the court for relief from the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any such motion shall be filed within 30 days after the entry of the judgment or order terminating parental rights, unless the parent files a timely notice of intent to pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall be filed within the time permitted by s. 809.107 (5). A motion under this subsection does not affect the finality or suspend the operation of the judgment or order terminating parental rights. Motions under this subsection and appeals to the court of appeals shall be the exclusive remedies for such a parent to obtain a new hearing in a termination of parental rights proceeding.

(3) An adoptive parent who has been granted adoption of a child under s. 48.91 (3) may not petition the court for a rehearing under sub. (1) or move the court under s. 806.07 for relief from the order granting adoption. A petition for termination of parental rights under s. 48.42 and an appeal to the court of appeals shall be the exclusive remedies for an adoptive parent who wishes to end his or her parental relationship with his or her adopted child.

History: 1977 c. 449; 1979 c. 300; 1987 a. 383; Sup. Ct. Order, 146 Wis. 2d xxxiii (1988); 1995 a. 275; 1997 a. 104, 114, 252, 292.

Judicial Council Note, 1988: Sub. (2) limits the remedies for relief from a judgment or order terminating parental rights when the aggrieved party is a parent whose rights were terminated by consent or who has failed to contest the petition. The motion for relief from the judgment or order must be filed within 40 days after entry of the judgment or order terminating parental rights, unless the appellate process is timely initiated, in which case the motion must be filed within 60 days after service of the transcript. The court may grant a rehearing upon a prima facie showing of one or more of the following grounds: mistake, inadvertence, surprise or excusable neglect; newly discovered evidence justifying a new hearing under s. 805.15 (3); fraud, misrepresentation or other misconduct of an adverse party; the judgment or order is void; the judgment or order is based upon a prior judgment which has been reversed or otherwise vacated. [Re Order effective Jan. 1, 1989]

Affidavits by the mother that she consented under duress and by her attorneys to what he expected to prove were not sufficient to reopen the case. Schroud v. Milwaukee County Department of Public Welfare, 53 Wis. 2d 620, 193 N.W.2d 671 (1972).

SUBCHAPTER XI

AUTHORITY

48.48 Authority of department. The department shall have authority:

(1) promote the enforcement of the laws relating to non-marital children, children in need of protection or services including developmentally disabled children and unborn children in need of protection or services and to take the initiative in all matters involving the interests of those children and unborn children

when adequate provision for those interests is not made. This duty shall be discharged in cooperation with the courts, county departments, licensed child welfare agencies and with parents, expectant mothers and other individuals interested in the welfare of children and unborn children.

(2) To assist in extending and strengthening child welfare services with appropriate federal agencies and in conformity with the federal social security act and in cooperation with parents, other individuals and other agencies so that all children needing such services are reached.

(3) To accept guardianship of children when appointed by the court, and to provide special treatment or care when directed by the court. A court may not direct the department to administer psychotropic medications to children who receive special treatment or care under this subsection.

(3m) To accept appointment by an American Indian tribal court in this state as guardian of a child for the purpose of making an adoptive placement for the child if all of the following conditions exist:

(a) The child does not have parents or a guardian or the parental rights to the child have been terminated by a tribal court in accordance with procedures that are substantially equivalent to the procedures specified in subch. VIII.

(b) The tribal court has transferred the guardianship or legal custody, or both, of the child to the department, if the child does not have parents or a guardian.

(c) The tribal court's judgment for termination of parental rights identifies the department as the agency that will receive guardianship or legal custody, or both, of the child upon termination, if the parental rights to the child have been terminated.

(d) The tribal court has signed a written contract that addresses federal and state law and that provides that the tribal court will accept the return of the legal custody or the legal custody and guardianship of the child if the department petitions the tribal court to do so under s. 48.485.

(8) To place children under its guardianship for adoption.

(8m) To enter into agreements with American Indian tribes in this state to implement the Indian child welfare act, 25 USC 1911 to 1963.

(9) To license foster homes or treatment foster homes as provided in s. 48.66 (1) (a) for its own use or for the use of licensed child welfare agencies or, if requested to do so, for the use of county departments.

(9m) To license shelter care facilities as provided in s. 48.66 (1) (a).

(10) To license child welfare agencies and day care centers as provided in s. 48.66 (1) (a).

(11) When notified of the birth or expected birth of a child who is or is likely to be a nonmarital child, to see that the interests of the child are safeguarded, that steps are taken to establish the child's paternity and that there is secured for the child, if possible, the care, support and education the child would receive if he or she were a marital child.

(12) (a) To enter into an agreement to assist in the cost of care of a child after legal adoption when the department has determined that such assistance is necessary to assure the child's adoption. Agreements under this paragraph shall be made in accordance with s. 48.975. Payments shall be made from the appropriation under s. 20.435 (3) (dd).

(b) This subsection shall be administered by the department according to criteria, standards and review procedures which it shall establish.

(13) To promulgate rules for the payment of an allowance to children in its institutions and a cash grant to a child being discharged from its institutions.

(15) To license group homes as provided in s. 48.625.

(16) To establish and enforce standards for services provided under ss. 48.345 and 48.347.

(16m) To employ under the unclassified service in an office of the department that is located in a 1st class city a director of the office of urban development who shall be appointed by the secretary to serve at the pleasure of the secretary and who shall coordinate the provision of child welfare services in a county having a population of 500,000 or more with the implementation of the Wisconsin works program under ss. 49.141 to 49.161 in a county having a population of 500,000 or more.

(17) (a) In a county having a population of 500,000 or more, to administer child welfare services and to expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare services by the legislature, which may be donated by individuals or private organizations or which may be otherwise provided. The department shall also have authority to do all of the following:

1. Investigate the conditions surrounding nonmarital children, children in need of protection or services and unborn children in need of protection or services within the county and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. Unless provided by another agency, the department shall offer social services to the caretaker of any child, and to the expectant mother of any unborn child, who is referred to the department under the conditions specified in this subdivision. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of these laws.

2. Accept legal custody of children transferred to it by the court under s. 48.355, to accept supervision over expectant mothers of unborn children who are placed under its supervision under s. 48.355, and to provide special treatment or care for children and expectant mothers if ordered by the court and if providing special treatment or care is not the responsibility of the county department under s. 46.215, 51.42, or 51.437. A court may not order the department to administer psychotropic medications to children and expectant mothers who receive special treatment or care under this subdivision.

3. Provide appropriate protection and services for children and the expectant mothers of unborn children in its care, including providing services for those children and their families and for those expectant mothers in their own homes, placing the children in licensed foster homes, treatment foster homes or group homes in this state or another state within a reasonable proximity to the agency with legal custody or contracting for services for those children by licensed child welfare agencies, except that the department may not purchase the educational component of private day treatment programs unless the department, the school board as defined in s. 115.001 (7) and the state superintendent of public instruction all determine that an appropriate public education program is not available. Disputes between the department and the school district shall be resolved by the state superintendent of public instruction.

4. Provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents.

5. Place children in a county children's home in the county, to accept guardianship of children when appointed by the court and to place children under its guardianship for adoption.

6. Provide services to the court under s. 48.06.

7. Contract with any parent or guardian or other person for the care and maintenance of any child.

8. License foster homes or treatment foster homes in accordance with s. 48.75.

9. Use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

10. Administer kinship care and long-term kinship care as provided in s. 48.57 (3m), (3n) and (3p).

11. Contract with the county department under s. 46.215, 51.42 or 51.437 or with a licensed child welfare agency to provide

any of the services that the department is authorized to provide under this chapter.

(b) In performing the functions specified in par. (a), the department may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children and unborn children in the county.

(c) From the appropriations under s. 20.435 (3) (cx), (gx), (kw) and (mx), the department may provide funding for the maintenance of any child who meets all of the following criteria:

1. Is 18 years of age or older.
2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma.
3. Received funding under s. 20.435 (3) (cx) or 46.495 (1) (d) immediately prior to his or her 18th birthday.
4. Is living in a foster home, treatment foster home, group home, or residential care center for children and youth.

(d) The finding provided for the maintenance of a child under par. (c) shall be in an amount equal to that which the child would receive under s. 20.435 (3) (cx), (gx), (kw) and (mx) or 46.495 (1) (d) if the child were 17 years of age.

History: 1973 c. 90, 333; 1977 c. 29; 1977 c. 83 s. 26; 1977 c. 354, 418, 447, 449; 1979 c. 34 ss. 833m, 834, 2102 (20)(a); 1979 c. 221, 300; 1983 a. 27 s. 2202 (20); 1983 a. 189 s. 329 (17); 1983 a. 447; 1985 a. 135, 176; 1985 a. 332 s. 251 (3); 1987 a. 339; 1989 a. 31, 107, 359; 1991 a. 316; 1993 a. 16, 375, 385, 446, 491; 1995 a. 27 ss. 2526 to 2534m, 9126(19), 9145(1); 1995 a. 77; 1997 a. 27, 35, 80, 105, 292; 1999 a. 9, 2001 a. 38, 59, 69

Cross Reference: See also ch. HFS 51, Wis. adm. code

An allegation that the department failed to adopt rules or to exercise supervision over a local social service agency and that those failures led to a deprivation of child custody without due process stated a cause of action for deprivation of civil rights. *Roe v. Borup*, 500 F. Supp. 127 (1980).

The state has ultimate foster care responsibility, and dismissal of a 42 USC 1983 action against the state for civil rights violations by a county agency was not appropriate. *Jeanine B. Blondin v. Thompson*, 877 F. Supp. 1268 (1995).

48.485 Transfer of tribal children to department for adoption. If the department accepts guardianship or legal custody or both from an American Indian tribal court under s. 48.48 (3m), the department shall seek a permanent adoptive placement for the child. If a permanent adoptive placement is not in progress within 2 years after entry of the termination of parental rights order by the tribal court, the department may petition the tribal court to transfer legal custody or guardianship of the child back to the tribe.

History: 1989 a. 31.

48.52 Facilities for care of children and adult expectant mothers in care of department. (1) FACILITIES MAINTAINED OR USED FOR CHILDREN. The department may maintain or use the following facilities for children in its care:

- (a) Receiving homes to be used for the temporary care of children;
- (b) Foster homes or treatment foster homes;
- (c) Group homes; and
- (f) Other facilities deemed by the department to be appropriate for the child, except that no state funds may be used for the maintenance of a child in the home of a parent or relative eligible for aid under s. 49.19 if such funds would reduce federal funds to this state.

(1m) FACILITIES MAINTAINED OR USED FOR ADULT EXPECTANT MOTHERS. The department may maintain or use the following facilities for adult expectant mothers in its care:

- (a) Community-based residential facilities, as defined in s. 50.01 (1g).
- (b) Inpatient facilities, as defined in s. 51.01 (10).
- (c) Other facilities determined by the department to be appropriate for the adult expectant mother.

(2) USE OF OTHER FACILITIES. (a) In addition to the facilities and services described in sub. (1), the department may use other facilities and services under its jurisdiction. The department may also contract for and pay for the use of other public facilities or private facilities for the care and treatment of children and the expectant

mothers of unborn children in its care. Placements in institutions for the mentally ill or developmentally disabled shall be made in accordance with ss. 48.14 (5), 48.347 (6) and 48.63 and ch. 51.

(b) Public facilities are required to accept and care for persons placed with them by the department in the same manner as they would be required to do had the legal custody of these persons been transferred by a court of competent jurisdiction. Nothing in this subsection shall be construed to require any public facility to serve the department inconsistently with its functions or with the laws and regulations governing their activities; or to give the department authority to use any private facility without its consent.

(c) The department shall have the right to inspect all facilities it is using and to examine and consult with persons whom the department has placed in that facility.

(4) COEDUCATIONAL PROGRAMS AND INSTITUTIONS. The department may institute and maintain coeducational programs and institutions under this chapter.

History: 1971 c. 213 s. 5; 1971 c. 215; 1973 c. 90; 1975 c. 39, 430; 1977 c. 354; 1979 c. 89; 1987 a. 332 s. 64; 1989 a. 31, 107; 1993 a. 385, 446; 1995 a. 27 ss. 2541 to 2541r, 9126(19); 1995 a. 77; 1997 a. 292.

A detention home is not one of the "other facilities" under sub. (1). *State ex rel. Harris v. Larson*, 64 Wis. 2d 521, 219 N.W.2d 335 (1974).

Foster homes owned, operated, or contracted for by the department or a county department are immune from local zoning ordinances. Foster homes owned, operated, or contracted for by licensed child welfare agencies are not immune. All family operated foster homes are subject to local zoning. Municipal foster home licensing ordinances are unenforceable. 63 Atty. Gen. 34.

Foster homes leased by the department pursuant to sub. (2) are immune from local zoning to the extent that the zoning conflicts with the department's possessory use of property under ch. 48, subject to s. 13.48 (13). The lessor remains responsible for property tax. 65 Atty. Gen. 93.

48.547 Alcohol and other drug abuse program.

(1) LEGISLATIVE FINDINGS AND PURPOSE. The legislature finds that the use and abuse of alcohol and other drugs by children and the expectant mothers of unborn children is a state responsibility of statewide dimension. The legislature recognizes that there is a lack of adequate procedures to screen, assess and treat children and the expectant mothers of unborn children for alcohol and other drug abuse. To reduce the incidence of alcohol and other drug abuse by children and the expectant mothers of unborn children, the legislature deems it necessary to experiment with solutions to the problems of the use and abuse of alcohol and other drugs by children and the expectant mothers of unborn children by establishing a juvenile and expectant mother alcohol and other drug abuse program in a limited number of counties. The purpose of the program is to develop intake and court procedures that screen, assess and give new dispositional alternatives for children and expectant mothers with needs and problems related to the use of alcohol beverages, controlled substances or controlled substance analogs who come within the jurisdiction of a court assigned to exercise jurisdiction under this chapter and ch. 938 in the counties selected by the department.

(2) DEPARTMENT RESPONSIBILITIES. Within the availability of funding under s. 20.435 (7) (mb) that is available for the program, the department shall select counties to participate in the program. Unless a county department of human services has been established under s. 46.23 in the county that is seeking to implement a program, the application submitted to the department shall be a joint application by the county department that provides social services and the county department established under s. 51.42 or 51.437. The department shall select counties in accordance with the request for proposal procedures established by the department. The department shall give a preference to county applications that include a plan for case management.

(3) MULTIDISCIPLINARY SCREEN. The department shall provide a multidisciplinary screen for the program. The screen shall be used by an intake worker to determine whether or not a child or an expectant mother of an unborn child is in need of an alcohol or other drug abuse assessment. The screen shall also include indicators that screen children and expectant mothers for:

- (a) Family dysfunction.
- (b) School, truancy or work problems.
- (c) Mental health problems.
- (d) Delinquent or criminal behavior patterns.

(4) ASSESSMENT CRITERIA. The department shall provide uniform alcohol and other drug abuse assessment criteria to be used in the pilot program under ss. 48.245 (2) (a) 3. and 48.295 (1). An approved treatment facility that assesses a person under s. 48.245 (2) (a) 3. or 48.295 (1) may not also provide the person with treatment unless the department permits the approved treatment facility to do both in accordance with the criteria established by rule by the department.

History: 1987 a. 339; 1989 a. 31; 1993 a. 213; 1995 a. 77.448; 1997 a. 292.

48.548 Multidisciplinary screen and assessment criteria. The department shall make the multidisciplinary screen developed under s. 48.547 (3) and the assessment criteria developed under s. 48.547 (4) available to all counties.

History: 1987 a. 339.

48.55 State adoption information exchange and state adoption center. **(1)** The department shall establish a state adoption information exchange for the purpose of finding adoptive homes for children with special needs who do not have permanent homes and a state adoption center for the purposes of increasing public knowledge of adoption and promoting to adolescents and pregnant women the availability of adoption services. From the appropriation under s. 20.435 (3) (dg), the department may provide not more than \$163,700 in fiscal year 2001-02 and not more than \$171,300 in each fiscal year thereafter as grants to individuals and private agencies to provide adoption information exchange services and to operate the state adoption center.

(2) The department shall promulgate rules governing the adoption information exchange and rules specifying the functions of the state adoption center. The rules specifying the functions of the state adoption center shall include all of the following:

(a) Training persons who provide counseling to adolescents including school counselors, county or department employees providing child welfare services under s. 48.56 or 48.561 and employees of a clinic providing family planning services, as defined in s. 253.07 (1) (b).

(b) Seeking persons to undergo training.

(c) Operating a toll-free telephone number to provide information and referral services.

(d) Distributing pamphlets which provide information on the availability of adoption services.

(e) Promoting adoption through the communications media.

History: 1953 a. 27; 1995 a. 266; 1997 a. 35; 1999 a. 9 ss. 1135 to 1139; 2001 a. 16.

Cross Reference: See also chs. HFS 42, 50, and 51, Wis. adm. code.

SUBCHAPTER XII

CHILD WELFARE SERVICES

48.56 Child welfare services in counties having populations of less than 500,000. **(1)** Each county having a population of less than 500,000 shall provide child welfare services through its county department.

(2) Each county department shall employ personnel who devote all or part of their time to child welfare services. Whenever possible, these personnel shall be social workers certified under ch. 457.

(3) This section shall not apply to those counties which had child welfare services administered by the staff of the juvenile court prior to January 1, 1955.

History: 1975 c. 307; 1977 c. 271; 1985 a. 176; 1991 a. 160; 1997 a. 27.

48.561 Child welfare services in a county having a population of 500,000 or more. **(1)** The department shall

provide child welfare services in a county having a population of 500,000 or more.

(2) The department shall employ personnel in a county having a population of 500,000 or more who devote all of their time directly or indirectly to child welfare services. Whenever possible, these personnel shall be social workers certified under ch. 457.

(3) (a) A county having a population of 500,000 or more shall contribute \$58,893,500 in each state fiscal year for the provision of child welfare services in that county by the department. That contribution shall be made as follows:

1. Through a reduction of \$37,209,200 from the amount distributed to that county under s. 46.40 (2) in each state fiscal year.

2. Through a reduction of \$1,583,000 from the amount distributed to that county under s. 46.40 (2m) (a) in each state fiscal year.

3. Through a deduction of \$20,101,300 from any state payment due that county under s. 79.03, 79.04, 79.058, 79.06, or 79.08 as provided in par. (b).

(b) The department of administration shall collect the amount specified in par. (a) 3. from a county having a population of 500,000 or more by deducting all or part of that amount from any state payment due that county under s. 79.03, 79.04, 79.058, 79.06, or 79.08. The department of administration shall notify the department of revenue, by September 15 of each year, of the amount to be deducted from the state payments due under s. 79.03, 79.04, 79.058, 79.06, or 79.08. The department of administration shall credit all amounts collected under this paragraph to the appropriation account under s. 20.435 (3) (kw) and shall notify the county from which those amounts are collected of that collection. The department may not expend any moneys from the appropriation account under s. 20.435 (3) (cx) for providing services to children and families under s. 48.48 (17) until the amounts in the appropriation account under s. 20.435 (3) (kw) are exhausted.

History: 1997 a. 27, 237; 1999 a. 9; 2001 a. 16.

48.57 Powers and duties of department and county departments providing child welfare services. **(1)** Each

county department shall administer and expend such amounts as may be necessary out of any moneys which may be appropriated for child welfare purposes by the county board of supervisors or by the legislature, which may be donated by individuals or private organizations or which may be otherwise provided. The department shall have the authority specified in s. 48.48 (17). A county department shall have the authority:

(a) To investigate the conditions surrounding nonmarital children, children in need of protection or services, including developmentally disabled children, and unborn children in need of protection or services within the county and to take every reasonable action within its power to secure for them the full benefit of all laws enacted for their benefit. Unless provided by another agency, the county department shall offer social services to the caretaker of any child, and to the expectant mother of any unborn child, who is referred to it under the conditions specified in this paragraph. This duty shall be discharged in cooperation with the court and with the public officers or boards legally responsible for the administration and enforcement of those laws.

(b) To accept legal custody of children transferred to it by the court under s. 48.355, to accept supervision over expectant mothers of unborn children who are placed under its supervision under s. 48.355 and to provide special treatment or care for children and expectant mothers if ordered by the court. A court may not order a county department to administer psychotropic medications to children and expectant mothers who receive special treatment or care under this paragraph.

(c) To provide appropriate protection and services for children and the expectant mothers of unborn children in its care, including providing services for those children and their families and for those expectant mothers in their own homes, placing those children in licensed foster homes, treatment foster homes or group

homes in this state or another state within a reasonable proximity to the agency with legal custody or contracting for services for those children by licensed child welfare agencies, except that the county department may not purchase the educational component of private day treatment programs unless the county department, the school board as defined in s. 115.001 (7) and the state superintendent of public instruction all determine that an appropriate public education program is not available. Disputes between the county department and the school district shall be resolved by the state superintendent of public instruction.

(d) To provide for the moral and religious training of children in its care according to the religious belief of the child or of his or her parents.

(e) If a county department in a county with a population of 500,000 or more and if contracted to do so by the department, to place children in a county children's home in the county under policies adopted by the county board of supervisors, to accept guardianship of children when appointed by the court and to place children under its guardianship for adoption.


(f) To provide services to the court under s. 48.06.

(g) Upon request of the department of health and family services or the department of corrections, to provide service for any child or expectant mother of an unborn child in the care of those departments.

(h) To contract with any parent or guardian or other person for the care and maintenance of any child.

(hm) If a county department in a county with a population of less than 500,000, to accept guardianship, when appointed by the court, of a child whom the county department has placed in a foster home or treatment foster home under a court order or voluntary agreement under s. 48.63 and to place that child under its guardianship for adoption by the foster parent or treatment foster parent.

(i) To license foster homes or treatment foster homes in accordance with s. 48.75.

 To use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

(2) In performing the functions specified in sub. (1) the county department may avail itself of the cooperation of any individual or private agency or organization interested in the social welfare of children and unborn children in the county.

(3) (a) From the reimbursement received under s. 46.495 (1) (d), counties may provide funding for the maintenance of any child who:

1. Is 18 years of age or older;
2. Is enrolled in and regularly attending a secondary education classroom program leading to a high school diploma;
3. Received funding under s. 46.495 (1) (d) immediately prior to his or her 18th birthday; and
4. Is living in a foster home, treatment foster home, group home, or residential care center for children and youth.

(b) The funding provided for the maintenance of a child under par. (a) shall be in an amount equal to that which the child would receive under s. 46.495 (1) (d) if the child were 17 years of age.

(3m) (a) In this subsection:

1. "Child" means a person under 18 years of age or a person 18 years of age or over, but under 19 years of age, who is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

2. "Kinship care relative" means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by blood, marriage or legal adoption; or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce.

(am) From the appropriation under s. 20.435 (3) (kc), the department shall reimburse counties having populations of less than 500,000 for payments made under this subsection and shall make payments under this subsection in a county having a population of 500,000 or more. A county department and, in a county having a population of 500,000 or more, the department shall make payments in the amount of \$215 per month to a kinship care relative who is providing care and maintenance for a child if all of the following conditions are met:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interests of the child.

2. The county department or department determines that the child meets one or more of the criteria specified in s. 48.13 or 938.13, that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home or, if the child is 18 years of age or over, that the child would meet or be at risk of meeting one or more of those criteria as specified in this subdivision if the child were under 18 years of age.

4. The county department or department conducts a background investigation under sub. (3p) of the kinship care relative, any employee and prospective employee of the kinship care relative who has or would have regular contact with the child for whom the payments would be made and any other adult resident of the kinship care relative's home to determine if the kinship care relative, employee, prospective employee or adult resident has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fm) 1. and 2., the kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child and that no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the kinship care relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the kinship care relative's ability to care for the child.

5. The kinship care relative cooperates with the county department or department in the application process, including applying for other forms of assistance for which the child may be eligible.

5m. The kinship care relative is not receiving payments under sub. (3n) with respect to the child.

6. The child for whom the kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

(ar) The department shall promulgate rules to provide assessment criteria for determining whether a kinship care relative who is providing care and maintenance for a child is eligible to receive payments under par. (am). The rules shall also provide that any criteria established under the rules shall first apply to applications for payments under par. (am) received, and to reviews under par. (d) conducted, on the effective date of those rules.

(b) 1. The county department or, in a county having a population of 500,000 or more, the department shall refer to the attorney responsible for support enforcement under s. 59.53 (6) (a) the name of the parent or parents of a child for whom a payment is made under par. (am).

2. When any kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child's parent to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time that payments are made under this subsection, is assigned to the state. If a child who is the beneficiary of a payment under this subsection is also the beneficiary of support under a judgment or order that

includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department or, in a county having a population of 500,000 or more, the department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

(cm) A kinship care relative who receives a payment under par. (am) for providing care and maintenance for a child is not eligible to receive a payment under sub. (3n) or s. 48.62 (4) for that child.

(d) A county department or, in a county having a population of 500,000 or more, the department shall review a placement of a child for which the county department or department makes payments under par. (am) not less than every 12 months after the county department or department begins making those payments to determine whether the conditions specified in par. (am) continue to exist. If those conditions do not continue to exist, the county department or department shall discontinue making those payments.

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am) 1., 2., 5. or 6. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.

(g) 1. Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.

c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering of the kinship care program in that county that the recipient has

requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

a. The recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient's behalf.

b. The recipient is notified of a change in his or her payments under par. (am) while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if his or her payments under par. (am) are to be discontinued pending the hearing decision.

(3n) (a) In this subsection:

1. "Child" means a person under 18 years of age or a person 18 years of age or over, but under 19 years of age, who is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent and who is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma.

2. "Long-term kinship care relative" means a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by blood, marriage or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce.

(am) From the appropriation under s. 20.435 (3) (kc), the department shall reimburse counties having populations of less than 500,000 for payments made under this subsection and shall make payments under this subsection in a county having a population of 500,000 or more. A county department and, in a county having a population of 500,000 or more, the department shall make monthly payments for each child in the amount specified in sub. (3m) (am) (intro.) to a long-term kinship care relative who is providing care and maintenance for that child if all of the following conditions are met:

1. The long-term kinship care relative applies to the county department or department for payments under this subsection and provides proof that he or she has been appointed as the guardian of the child under s. 48.977 (2).

2. The county department or department inspects the long-term kinship care relative's home, interviews the long-term kinship care relative and determines that long-term placement with the long-term kinship care relative is in the best interests of the child.

4. The county department or department conducts a background investigation under sub. (3p) of the long-term kinship care relative, the employees and prospective employees of the long-term kinship care relative who have or would have regular contact with the child for whom the payments would be made and any other adult resident, as defined in sub. (3p) (a), of the long-term kinship care relative's home to determine if the long-term kinship care relative, employee, prospective employee or adult resident has any arrests or convictions that are likely to adversely affect the child or the long-term kinship care relative's ability to care for the child.

4m. Subject to sub. (3p) (fin) 1m. and 2m., the long-term kinship care relative states that he or she does not have any arrests or convictions that could adversely affect the child or the long-term kinship care relative's ability to care for the child and that, to the best of the long-term kinship care relative's knowledge, no adult resident, as defined in sub. (3p) (a), and no employee or prospective employee of the long-term kinship care relative who would have regular contact with the child has any arrests or convictions that could adversely affect the child or the long-term kinship care relative's ability to care for the child.

5. The long-term kinship care relative cooperates with the county department or department in the application process, including applying for other forms of assistance for which the child may be eligible.

5m. The long-term kinship care relative is not receiving payments under sub. (3m) with respect to the child.

5r. The child for whom the long-term kinship care relative is providing care and maintenance is not receiving supplemental security income under 42 USC 1381 to 1383c or state supplemental payments under s. 49.77.

6. The long-term kinship care relative and the county department or department enter into a written agreement under which the long-term kinship care relative agrees to provide care and maintenance for the child and the county department or department agrees, subject to sub. (3p) (hm), to make monthly payments to the long-term kinship care relative at the rate specified in sub. (3m) (am) (intro.) until the earliest of the following:

a. The date on which the child attains the age of 18 years or, if on that date the child is a full-time student in good academic standing at a secondary school or its vocational or technical equivalent and is reasonably expected to complete his or her program of study and be granted a high school or high school equivalency diploma, the date on which the child is granted a high school or high school equivalency diploma or the date on which the child attains the age of 19 years, whichever occurs first.

b. The date on which the child dies.

c. The date on which the child is placed outside the long-term kinship care relative's home under a court order or under a voluntary agreement under s. 48.63 (1) or (5) (b).

d. The date on which the child ceases to reside with the long-term kinship care relative.

e. The date on which the long-term kinship care's guardianship under s. 48.977 terminates.

f. The date on which the child moves out of the state.

(ar) Subject to sub. (3p) (fm) 1m. and (hm), a county department or, in a county having a population of 500,000 or more, the department shall enter into an agreement under par. (am) 6. if all of the following conditions are met:

1. All of the conditions in par. (am) 1. to 5r. are met.

2. The applicant has expressed a willingness to enter into the agreement.

(b) 1. The county department or, in a county having a population of 500,000 or more, the department shall refer to the attorney responsible for support enforcement under s. 59.53 (6) (a) the name of the parent or parents of a child for whom a payment is made under par. (am).

2. When any long-term kinship care relative of a child applies for or receives payments under this subsection, any right of the child or the child's parent to support or maintenance from any other person, including any right to unpaid amounts accrued at the time of application and any right to amounts accruing during the time that payments are made under this subsection, is assigned to the state. If a child is the beneficiary of support under a judgment or order that includes support for one or more children who are not the beneficiaries of payments under this subsection, any support payment made under the judgment or order is assigned to the state in the amount that is the proportionate share of the child who is the beneficiary of the payment made under this subsection, except as otherwise ordered by the court on the motion of a party.

(c) The county department or, in a county having a population of 500,000 or more, the department shall require the parent or parents of a child for whom a payment is made under par. (am) to initiate or continue health care insurance coverage for the child.

(cm) A long-term kinship care relative who receives a payment under par. (am) for providing care and maintenance for a child is not eligible to receive a payment under sub. (3m) or s. 48.62 (4) for that child.

(d) The county department or, in a county having a population of 500,000 or more, the department shall, at least once every 12 months after the county department or department begins making payments under this subsection, determine whether any of the events specified in par. (am) 6. a. to f. have occurred. If any such

events have occurred, the county department or department shall discontinue making those payments.

(e) The department shall determine whether the child is eligible for medical assistance under ss. 49.43 to 49.47.

(f) Any person whose application for payments under par. (am) is not acted on promptly or is denied on the grounds that a condition specified in par. (am) 1., 2., 5., 5m. or 5r. has not been met and any person whose payments under par. (am) are discontinued under par. (d) may petition the department under par. (g) for a review of that action or failure to act. Review is unavailable if the action or failure to act arose more than 45 days before submission of the petition for review.

(g) 1. Upon receipt of a timely petition under par. (f) the department shall give the applicant or recipient reasonable notice and an opportunity for a fair hearing. The department may make such additional investigation as it considers necessary. Notice of the hearing shall be given to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. That county department or subunit of the department may be represented at the hearing. The department shall render its decision as soon as possible after the hearing and shall send a certified copy of its decision to the applicant or recipient and to the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision of the department shall have the same effect as an order of the county department or subunit of the department whose action or failure to act is the subject of the petition. The decision shall be final, but may be revoked or modified as altered conditions may require. The department shall deny a petition for review or shall refuse to grant relief if any of the following applies:

a. The petitioner withdraws the petition in writing.

b. The sole issue in the petition concerns an automatic payment adjustment or change that affects an entire class of recipients and is the result of a change in state law.

c. The petitioner abandons the petition. Abandonment occurs if the petitioner fails to appear in person or by a representative at a scheduled hearing without good cause, as determined by the department.

2. If a recipient requests a hearing within 10 days after the date of notice that his or her payments under par. (am) are being discontinued, those payments may not be discontinued until a decision is rendered after the hearing but payments made pending the hearing decision may be recovered by the department if the contested action or failure to act is upheld. The department shall promptly notify the county department of the county in which the recipient resides or, if the recipient resides in a county having a population of 500,000 or more, the subunit of the department administering of the long-term kinship care program in that county that the recipient has requested a hearing. Payments under par. (am) shall be discontinued if any of the following applies:

a. The recipient is contesting a state law or a change in state law and not the determination of the payment made on the recipient's behalf.

b. The recipient is notified of a change in his or her payments under par. (am) while the hearing decision is pending but the recipient fails to request a hearing on the change.

3. The recipient shall be promptly informed in writing if his or her payments under par. (am) are to be discontinued pending the hearing decision.

(3p) (a) In this subsection, "adult resident" means a person 18 years of age or over who lives at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n) with the intent of making that home his or her home or who lives for more than 30 days cumulative in any 6-month period at the home of a person who has applied for or is receiving payments under sub. (3m) or (3n).

(b) 1. After receipt of an application for payments under sub. (3m) or (3n), the county department or, in a county having a population of 500,000 or more, the department of health and family ser-